

BALL JANIK LLP
ATTORNEYS

1455 F STREET, NW, SUITE 225
WASHINGTON, D C 20005

www.balljanik.com

TELEPHONE 202 638-3307
FACSIMILE 202-783-6947

KARL MORELL



December 29, 2008

224271

Hand Delivery

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

ENTERED
Office of Proceedings

DEC 29 2008

Part of
Public Record

Re: STB Docket No AB-1020X, East Penn Railroad, LLC – Abandonment
Exemption – In Berks and Montgomery Counties, Pennsylvania

Dear Acting Secretary Quinlan:

Attached for filing are the original and ten (10) copies of the Preliminary Reply of East Penn Railroad, LLC (“ESPN”) to the Request For Establishment of Conditions and Amount of Compensation (“Request for Conditions”).

As explained in the Preliminary Reply, Berks County filed its Request for Conditions on December 24, 2008. Pursuant to 49 C.F.R. § 1152.27(g)(1), ESPN’s reply is due today. Pursuant to 49 C.F.R. § 1152.27(h)(4), ESPN’s reply is due December 31, 2008. Because ESPN was not properly served with the Request for Conditions, ESPN should not be held to the reply deadline set forth in Section 1152.27(g)(1). Nevertheless, out an abundance of caution, ESPN is filing this preliminary reply today and will, if at all possible, file its final reply on December 31, 2008.

If you have any questions, please call me.

Sincerely,

Karl Morell

Enclosures

December 19, 2008
Page 2

We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Morell". The signature is fluid and cursive, with the first name "Karl" being more prominent than the last name "Morell".

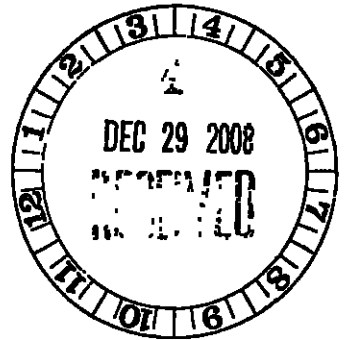
Karl Morell

cc: Honorable Anne K. Quinlan

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1020X

EAST PENN RAILROAD, LLC
-- ABANDONMENT EXEMPTION--
IN BERKS AND MONTGOMERY COUNTIES, PA



224271

**PRELIMINARY REPLY OF EAST PENN RAILROAD, LLC, TO REQUEST FOR
ESTABLISHMENT OF CONDITIONS AND AMOUNT OF COMPENSATION**

ENTERED
Office of Proceedings

DEC 29 2008

Part of
Public Record

Karl Morell
Of Counsel
Ball Janik LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for:
East Penn Railroad, LLC

Dated: December 29, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1020X

EAST PENN RAILROAD, LLC
--ABANDONMENT EXEMPTION--
IN BERKS AND MONTGOMERY COUNTIES, PA

**PRELIMINARY REPLY OF EAST PENN RAILROAD, LLC, TO REQUEST FOR
ESTABLISHMENT OF CONDITIONS AND AMOUNT OF COMPENSATION**

East Penn Railroad, LLC ("ESPN") hereby files this **preliminary reply** to the Request for Establishment of Conditions and Amount of Compensation filed by Berks County, PA (the "County"), on December 24, 2009 ("Request for Conditions"). ESPN urges the Surface Transportation Board ("Board" or "STB") to reject the terms and conditions requested by the County and, instead, adopt \$2,162,018 as the minimum purchase price for the rail line.

I. INTRODUCTION

On December 24, 2008, the County filed its Request for Conditions. Pursuant to 49 C.F.R. § 1152.27(g)(1), ESPN's reply is due today (five days after the Request for Conditions was filed). Pursuant to 49 C.F.R. § 1152.27(h)(4), ESPN's reply is due December 31, 2008 (35 days after November 26, 2008, when the offer of financial assistance was filed).¹ In filing the Request for Conditions, the County failed to comply with the service requirement of Section 1152.27(g)(1) (service by overnight mail) or Section 1104.12(a) ("Service on the parties should

¹ Section 1152.27(h)(4) provides that any evidence and information submitted after [this date] will be rejected."

be by the same method and class of service used in serving the Board..."). After an inquiry as to why ESPN had not been served with the filing, at 4:54 p.m., on December 26, 2008, the County's law firm informed ESPN that they had sent the filing "to our landlord's mail room for posting by first class mail on 12/24." As of 1:00 p.m. today, that mail has not arrived.

Pursuant 49 U.S.C. § 10904(f)(1)(A), the Board is required to render its final decision in this proceeding by January 23, 2009, which is 16 workdays from today. Given the conflict in the Board's regulations as to the due date for ESPN's reply, and in light of the upcoming statutory deadline for the final decision, ESPN is filing today, out of an abundance of caution, a **preliminary** reply which sets forth ESPN affirmative evidence as to the net liquidation value of the rail line being abandoned. ESPN cannot reasonably be expected to respond to the Request for Conditions today particularly since ESPN's inability to respond was directly caused by the County's failure to comply with the applicable rules governing service of pleadings. ESPN will attempt, to the fullest extent possible, to file its final reply on December 31, 2008, which will, for the convenience of the Board, restate the affirmative evidence contained in this preliminary reply and response to the information contained in the Request for Conditions.

II. BACKGROUND

On July 31, 2008, ESPN filed a Petition for Exemption ("Petition") with the Board to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, ESPN's abandonment of the 8.6-mile rail line located between milepost 0.0, at Pottstown, and milepost 8.6, at Boyertown, in Berks and Montgomery Counties, Pennsylvania (the "Line"). On September 9, 2008, the County filed a protest ("Protest"). By decision served November 18, 2008, the Board granted the exemption ("November 18th Decision").

In the Petition, ESPN asserted that the net liquidation value ("NLV") of the Line was \$2,077,556, consisting of \$1,082,000 net salvage value ("NSV") and an estimate of \$995,556 for the net real estate value. ESPN's NSV was based on a binding agreement ESPN has with The Tie Yard of Omaha ("Tie Yard"), whereby Tie Yard has agreed to acquire the rail, other track materials and ties for the net price of \$1,082,000. The gross real estate value was based on ESPN's estimated average per acre value of \$18,821, multiplied by 60.8 acres, which ESPN had mistakenly determined it held in fee. The gross real estate value of \$1,144,317 was adjusted by 13 percent to account for selling costs, holding costs/gains and a discount factor, which produced a net real estate value of \$995,556.

In its Protest, the County claimed the NLV of the Line was \$919,376. In arriving at that amount, the County made no independent appraisals or valuations. Rather, the County simply took ESPN's net values, treated them as gross values and then proceeded to make adjustments which either had already been made by ESPN or are inappropriate under the Board's rules governing abandonments. For example, the County accepted the \$1,082,000 salvage bid by Tie Yard. However, rather than treating it as the net amount ESPN is to receive, the County *inappropriately deducted: (1) \$30,000 for crossing removals [even though the deduction is in violation of 49 C.F.R. § 1152.34(c)(1)(iii)(A)(2)]; and (2) \$450,000 for the removal of bridges on the Line [even though ESPN intends to rail-bank the Line and leave all bridges in place and the deduction is in violation of Section 1152.34(c)(1)(iii)(A)(2)].* In other words, in arriving at its NSV of \$602,000, the County inappropriately deducted \$480,000 in costs which ESPN will not incur and, in any event, may not be deducted in calculating NSV under the Board's rules

In arriving at its net real estate value of \$317,376, the County accepted ESPN's fee acreage (60.8 acres), the 13 percent adjustment to account for selling costs, holding costs/gains and a discount factor, and the average per acre value of \$18,821. Once again, the County double-counted an adjustment that had already been made. ESPN's per acre value already included a sizable discount for such factors as terrain. Consequently, the County took an already discounted per acre value and discounted by an additional 62.5 percent.

On November 10, 2008, the County sought leave to supplement the record ("Supplemental Filing"). In support of its Supplemental Filing, the County pointed out that the price of **scrap steel** had declined since the filing of its Protest and sought to make corresponding adjustments. Notwithstanding the decline in **scrap steel** prices, the adjusted NSV of the Line set forth in the Supplemental Filing (\$1,148,861) is higher than the NSV of the Line set forth in the Protest (\$919,376).

The Supplemental Filing contains some erroneous or highly questionable data. For example, the County claims that 100 pound relay rail has a market value of \$700 per net ton and that 90 pound relay rail has a market value of \$250 per net ton. The County claims to have obtained those figures from American Metals Market ("AMM"). But AMM does not publish prices for relay rail. Also, the premise of the Supplemental Filing was that **scrap steel** prices had declined, yet only **33 percent** of the tonnage on the Line is **scrap** whereas **46 percent** of the tonnage is **relay**. The County fails to explain how it derived its relay prices or why the price for 100 pound relay is almost three times the price of the 90 pound relay on a tonnage basis. Although the County does not allege that the price of ties has declined, the \$3 per tie figure used

by the County in the Supplemental Filing is only about one half of the average price contained in the Tie Yard bid, which bid amount the County had accepted in the Protest.

As is pertinent in this Offer of Financial Assistance ("OFA") proceeding, the November 18th Decision denied the County's petition to supplement the record and established the NLV of the Line as \$1,399,376. The Board accepted ESPN evidence as to the NSV of the Line but rejected ESPN's net value of the Line's real estate as not properly supported. While the Board noted that the County's real estate values were also not properly supported, it accepted those values since they would not prejudice ESPN.

On November 19, 2008, the County requested the Board to toll the due date for the filing of an OFA, which the Board denied by decision served November 26, 2008. On November 26, 2008, the County filed its OFA, offering to acquire the Line for \$501,967. On November 28, 2008, the County revised its OFA to \$500,000.

III. THE OFA AND REQUEST FOR CONDITIONS SHOULD BE REJECTED

Neither the OFA nor the Request For Conditions is in compliance with the Board's regulations governing OFAs.

Pursuant to 49 U.S.C. § 10904(c) and 49 C.F.R. § 1152.27(c)(1)(ii)(C), an offeror is obligated to explain the disparity between its purchase price and the carrier's estimated minimum purchase price. Not only has the County failed adequately to explain the difference between its revised OFA and ESPN's estimated NLV, it has failed to explain the wide disparity between the revised OFA (\$500,000) and the NLV contained in its Protest (\$919,376) or the NLV contained in its Supplemental Filing (\$1,148,861). The NLV contained in the Supplemental Filing, which already contains the County's revisions for the decline in scrap steel prices, is more than twice

the revised OFA. The County provides no explanation or justification as to why the OFA is less than half of its own NLV evidence.

The County claims that the OFA price was derived from the NLV (\$1,399,376)² determined by the Board in the November 18th Decision with certain adjustments. The adjustments, however, are neither appropriate nor in compliance with the applicable Board regulations. The County has adjusted the NSV adopted by the Board in the November 18th Decision by \$251,000 to reflect the decline in scrap steel prices since the Tie Yard bid. The County, however, fails to support its relay and reroll values and fails to explain whether those values have increased since July so as to offset, in whole or in part, the declined scrap prices. The County further reduces the Tie Yard bid by \$172,000 for take up costs, but those costs are already included in the Tie Yard binding contract. In addition, the County reduces the NSV by \$480,000 to reflect the alleged negative value of the bridges and grade crossings on the Line. Because ESPN intends to rail-bank the Line, the bridges will not be removed. In any event, the County's adjustments for the bridges and grade crossings are in violations of Section 1152.34(c)(1)(iii)(A)(2). Consequently, the OFA is neither credible nor reasonable.

Section 10904(d)(2) of 49 U.S.C. contemplates that the parties engage in negotiations over price once an OFA is accepted by the Board. Pursuant to 49 C.F.R. § 1152.27(h)(3), a party seeking to have the Board establish compensation must, as part of its case in chief, provide

“Reasons why its estimates are correct and the other negotiating party's estimates are incorrect, points of agreement and points of disagreement between the negotiating parties....”

² The County mistakenly cited the Board's calculated NLV as \$1,404,967.

In other words, both the statute and the Board's regulations make negotiations between the parties a prerequisite to either party seeking to have the Board establish compensation.

In light of the Board's November 18th Decision finding that ESPN had not adequately supported its real estate values, ESPN retained a real estate expert in the area of the Line to prepare a valuation of the real estate associated with the Line. Immediately after ESPN received the appraisal, ESPN contacted the County's counsel to inform him of the real estate appraisal and to see if the County had any desire to negotiate a purchase price. See Exhibit 1. The County informed ESPN on December 19, 2008 that it was taking ESPN's inquiry as to negotiations under advisement. Rather than attempt to negotiate compensation, the County elected to file its Request for Conditions a few days later. See Exhibit 2.³ Since the County refused to negotiate over the purchase price, the County should be precluded from filing the Request for Conditions.

IV. VALUATION AND EVIDENTIARY STANDARDS

General Standard The County's Request for Conditions and the minimum purchase price for the Line are governed by 49 U.S.C. §10904. Pursuant to Section 10904(f)(1)(B), the Board may **not** set a price that is below the fair market value of the Line. In the seminal case in this area, *Chicago N W Transp Co. – Abandonment*, 363 I.C.C. 956, 958 (1981) (“*Lake Geneva Line*”), *aff’d sub nom*, *Chicago and North Western Transp Co v United States*, 678 F.2d 665 (7th Cir. 1982), the Board's predecessor, the Interstate Commerce Commission (“ICC”), held

³ In hindsight it is quite obvious why the County refused to negotiate, since to have done so would likely have required the County to reveal information that would have provided ESPN more time to respond to the Request for Conditions. The County elected instead to wait until Christmas Eve to file its Request for Conditions and serve the filing via regular mail so that no one would see the filing for at least five days and, thereby, deprive ESPN of any meaningful opportunity to respond. ESPN reserves the right to file a motion to reject the Request for Conditions on ground that the County failed to comply with the Board's service rules.

that, in the absence of a higher going concern value for continued rail use, the proper valuation standard in OFA proceedings is NLV of the rail properties for their highest and best nonrail use. The NLV consists of the real estate value plus the gross salvage value of the track and materials, less removal costs. See Docket No. AB-556 (Sub-No. 2X), *Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH, and Darlington, PA, In Mahoning and Columbiana Counties, OH, and Beaver County, PA* (not printed), served January 7, 2000 (“*Railroad Ventures*”), *aff’d sub nom. R R Ventures, Inc. v STB*, 299 F.3rd 523 (6th Cir. 2002); Docket No. AB-491X, *R J Corman Railroad Company/Pennsylvania Lines – Abandonment Exemption – In Cambria County, PA Request To Set Terms and Conditions* (not printed), served February 20, 1998; Docket No. AB-32 (Sub-No. 43), *Boston and Maine Corp and Springfield Terminal Ry Corp – Abandonment and Discontinuance of Service in Hartford County, CT – In the Matter of a Request to set Terms and Conditions* (not printed), served August 9, 1991 (“*B&M*”). Since operations on the Line are unprofitable, NLV is the appropriate valuation standard in this proceeding.

Burden of Proof. In OFA proceedings to set terms, the Board and the ICC established that the burden of proof is on the offeror, the proponent of the requested relief. Therefore, the County has the burden of proof as to all elements of NLV. The Board and ICC have consistently noted that placing the burden of proof on the offeror is particularly appropriate in OFA proceedings because the offeror has the right to withdraw its offer if the established purchase price proves unacceptable for whatever reason, while the rail carrier is required to sell its line to the offeror at the sale price set by the Board even if the carrier views the price as too low. *Railroad Ventures*; Docket No. AB-31 (Sub-No. 29), *The Grand Trunk Western Railroad*

Company Abandonment – In Clark, Madison and Fayette Counties, OH (not printed), served June 26, 1990 (“*Grand Trunk*”), STB Docket No. AB-868X, *Mississippi Tennessee Holding, LLC – Abandonment Exemption – In Union, Pontotoc and Chickasaw Counties, MS* (not printed, served November 2, 2004 (“*Mississippi Tennessee*”) slip op. at 2.

The burden of proof standard requires that, absent probative evidence supporting the offeror’s estimates, the rail carrier’s evidence is accepted. *See Railroad Ventures: Norfolk Southern, Buffalo Ridge; B&O*. Whenever there is a disagreement, the rail carrier’s estimate prevails unless the offeror provides more reliable and verifiable documentation for its valuations. Unless the offeror provides specific evidence supporting its valuations and contradicting the carrier’s valuations, the carrier’s evidence is accepted by the Board. *Railroad Ventures: Mississippi Tennessee*

Real Estate Valuation. The Board assigns value to all real estate for which the railroad holds marketable title. Docket No. AB-326X, *Washington Central Railroad Company, Inc – Abandonment Exemption – In Yakima County, WA* (not printed), served February 17, 1993. The burden of proof remains with the offeror to demonstrate with clear and convincing evidence that the railroad does not have marketable title. The mere allegation that the railroad does not have merchantable title is an insufficient basis for the Board to decide that the railroad does not hold marketable title and should receive no value for the real estate. Docket No. AB-335 (Sub-No. 5X), *KCT Railway Corporation – Abandonment Exemption – Between Lamar and Wiley, CO* (not printed), served December 23, 1991 (“*KCT Railway*”); *Lake Geneva Line* at 983. All areas where the evidence is equal or the offeror presents the less convincing evidence, or no evidence,

must be resolved in the favor of the railroad. *See Grand Trunk, Norfolk Southern; Buffalo Ridge, B&O*.

The Board has historically used the "across-the-fence" methodology for valuing rail line corridors. *See* STB Docket No. AB-55 (Sub-No. 643X), *CSX Transportation, Inc. – Abandonment Exemption – In LaPorte, Porter and Starke Counties, IN* (not printed), served April 30, 2004; *Railroad Venture*. The "across-the-fence" methodology assumes that a sale to adjacent land owners yields the highest and best nonrail use of the corridor. STB Finance Docket No. 35160, *Oregon International Port of Coos Bay – Feeder Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.* (not printed), served October 31, 2008.

Discounts of the appraised value of real estate for the anticipated difficulty of selling certain parcels have been allowed, but discounts to account for the present value of future cash flows have been rejected. *B&M*. Discounts for sales commissions where the railroad could sell the land itself have also been rejected. Docket No. AB-19 (Sub-No. 134X), *The Baltimore and Ohio Railroad Company – Abandonment – In Ross County, OH* (not printed), served November 6, 1987 ("B&OIR").

V. REAL ESTATE VALUATION

There are three major components to the valuation of ESPN's real estate underlying the Line. First, the total acreage held by ESPN in fee. Second, the across-the-fence value of each parcel. Third, appropriate discounts to be applied to the gross real estate values.

ESPN recently retained William S. Yetke to appraise the real estate on the Line. Mr. Yetke's appraisal is attached as Exhibit 3 ("Yetke Appraisal"). Mr. Yetke is an expert real estate

appraiser, licensed in the State of Pennsylvania and a member of the Appraisal Institute, holding a MAI and SRA designation.⁴

In preparing its Petition, ESPN miscalculated the acreage on the Line to be 64 acres.⁵ Mr. Yetke determined that there are actually 79.928 acres on the Line.⁶ In other words, ESPN had understated the acreage by nearly 20 percent.

In estimating value, Mr. Yetke utilized the “across-the-fence” method and the valuation was based on:

“Market data, including but not limited to sales data, asking prices, and market trends were obtained from information on file and from real estate appraisers, brokers, sellers, and buyers. Multiple listing services as well as other market data sources were referenced.

The valuation was based on land sale data and overall land value trends for similar types of land including market data assembled for the valuation of a similar former railroad right of way in a nearby location in Berks County.”

Yetke Appraisal at 9.

For valuation purposes, Mr. Yetke separated the right-of-way into 13 parcels “based on zoning, land use, road crossings and other relevant factors.” Yetke Appraisal at 13. For each parcel, Mr. Yetke provides such relevant information as the length of the corridor, its location,

⁴ Mr. Yetke’s qualifications are set forth in pages 75 through 79 of the Yetke Appraisal. Mr. Yetke is a certified Appraiser in Pennsylvania and New Jersey, is a member of the Pennsylvania Association of Realtors and the Philadelphia Board of Realtors and is an Adjunct Lecturer at Temple University, Department of Legal and Real Estate Studies. During his nearly 40-year career as an appraiser, Mr. Yetke has appraised numerous types of real estate, including railroad rights-of-way and railroad system. Mr. Yetke’s extensive list of clients include Consolidated Rail Corporation, Norfolk Southern Corporation and the greater Berks Development Fund.

⁵ The miscalculation was due to the poor deed information provided by the County to ESPN’s predecessor in 2003.

⁶ The total acreage calculated by Mr. Yetke excludes existing street/road crossings, overpasses and underpasses. Yetke Appraisal at 5

the width of the right-of-way, elevation, topography, adjoining land use, zoning and pictures of the parcel. Yetke Appraisal at 14 through 42.

Mr. Yetke explains the across the fence valuation methodology used in the Yetke Appraisal, as follows:

“In using this technique, recent sales of comparable or similar land are located, researched, and compared to the property being appraised. A comparison analysis is made in which adjustments are considered, and made if necessary, for significant differences between the sale properties and the appraised property. The adjustments made reflect the appraiser’s opinion of market reaction in terms of price for substantial differences between the comparables and the property being valued.”

Yetke Appraisal at 46.

Mr. Yetke further explains that the same overall methodology was used to value each of the 13 parcels:

“Comparable sales were chosen for each valuation and the sales were compared to the designated subject parcel. Adjustments were considered and made as follows. Initial adjustments included those for property rights conveyed, financing terms, and conditions of sale. The sales were then analyzed and adjusted, if necessary, for additional factors of comparison including the time factor, location, size, and physical characteristics. Other adjustments were considered and made if required.”

Yetke Appraisal at 47.

After analyzing 10 comparable sales and making all necessary adjustments, Mr. Yetke arrives at the following valuations for the 13 parcels comprising the Line:

<u>Parcel No.</u>	<u>Parcel Size</u> (acres)	<u>Contributory</u> <u>Value</u>
1	0.997	\$130,300
2	4.473	\$214,300
3	10.765	\$45,200
4	1.332	\$6,700
5	11.409	\$57,000

6	3.221	\$16,100
7	25 057	\$120,300
8	9.294	\$46,500
9	6.706	\$36,900
10	2.239	\$167,900
11	1.814	\$237,000
12	1.758	\$114,300
13	<u>0.863</u>	<u>\$48,900</u>
Totals	79.928	\$1,241,400

Yetke Appraisal at 63.

In the Petition, ESPN adjusted the gross value by 13 percent to account for selling costs, holding costs/gains and a discount factor ESPN will use that same percentage adjustment here even though, on further reflection, the selling costs and discount factor are overstated.⁷ Accordingly, the net real estate value is \$1,080,018.

VI. SALE AGREEMENT CONSTITUTES MINIMUM NET SALVAGE VALUE

The Board and the ICC have recognized that a firm offer or sales contract constitutes the best evidence of the minimum value of a right-of-way and the assets' marketability. *See Railroad Ventures*; Docket No. AB-1 (Sub-No. 294X). *Chicago and North Western Railway Company – Abandonment Exemption – Between Norfolk and Merriman, NE – In the Matter of a Request to set Terms and Conditions* (not printed), served August 31, 1994; Docket No. AB-255 (Sub-No. 2X), *Portland Traction Company – Abandonment Exemption – In Multnomah and Clackamas Counties, OR* (not printed), served January 10, 1990 (“*Portland Traction*”); and Docket No. AB-

⁷ The 13 percent adjustment assumes a sell-off period of 2 years, whereas the Yetke Appraisal suggests a 1-year period may be more realistic. Also, ESPN intends to sell the corridor for rail-banking, trail use purposes. Consequently, ESPN will not incur the 10 percent real estate commission contained in the 13 percent adjustment. *See B&OII* (no commission appropriate where railroad sells the land itself).

19 (Sub-No. 112). *The Baltimore and Ohio Railroad Company, Metropolitan Southern Railroad Company and Washington and Western Maryland Railway Company – Abandonment and Discontinuance of Service – In Montgomery County, MD. and the District of Columbia* (not printed), served August 17, 1988; STB Docket No. AB-398 (Sub-No. 7X). *San Joaquin Valley Railroad Company – Abandonment Exemption – In Tulare County, CA* (not printed), served August 26, 2008; Docket No. AB-6 (Sub-No. 357X). *Burlington Northern Railroad Company – Abandonment Exemption – In King County, WA* (not printed), served April 22, 1994.

In *Portland Traction*, the ICC noted that, under Section 10904, the abandoning railroad is entitled to the minimum value of the property guaranteed by the taking clause of the Constitution and that forcing a sale at a price less than the railroad would otherwise receive under an arms-length agreement would run afoul of the transportation policy at 49 U.S.C. § 10101(5). The ICC went on to conclude that the sales agreement the abandoning railroad had entered into was the best evidence of the right-of-way's marketability and NLV. In reaching that conclusion, the ICC pointed out that "[w]hile section [10904] was enacted to assist 'shippers that are dependent upon continued rail service' ... nothing in it or its legislative history permits us to value a line at less than fair market value, even to ensure continued rail service from a prospective purchaser." *Portland Traction*, slip op., at 5-6. More recently, the Board found that a bid from a rail salvage company "is persuasive evidence of the NSV for track and materials on the line...." *Railroad Ventures*, slip op., at 9.

A copy of the Tie Yard salvage bid and the Salvage Agreement between ESPN and Tie Yard are attached as Exhibit 4. The Salvage Agreement contractually obligates Tie Yard to pay ESPN \$1,082,000 for the rail, OTM and ties on the Line. See Section 2.1 of the Salvage

Agreement. The Salvage Agreement cannot be modified or revised should steel prices rise or fall. The only exception is that the Salvage Agreement would become void if the Board forces a sale of the Line through the OFA process. When entering into the Salvage Agreement on July 31, 2008, ESPN assumed the risk of steel prices going up and Tie Yard assumed the risk to steel prices going down.

While the Board has noted that a forced sale under Section 10904 would trump a contract for the sale of the line outside of the OFA process [Docket No. AB-385 (Sub-No. 1X), *Georgia Southwestern Division, South Carolina Central Railroad Co – Abandonment Exemption -- In Dodge and Wilcox Counties, GA* (not printed), served February 2, 1996], the Board may not trump the contract price by setting an OFA sale price below the contract price without running afoul of the taking clause of the Constitution [*Portland Traction*].

Consequently, the **Net Liquidation Value** of the Line equals **\$2,162,018**, consisting of a net real estate of \$1,080,018, and a NSV of \$1,082,000.

CONCLUSION

Based on this preliminary filing, ESPN respectfully requests the Board to set the purchase price for the Line at **\$2,162,018**, and impose the customary closing conditions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karl Morell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Karl Morell
Of Counsel
Ball Janik LLP
1455 F St., N.W. Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for.
EAST PENN RAILROAD, LLC

Dated December 29, 2008

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2008, I caused the foregoing Preliminary Reply to be served, by hand delivery, on Counsel for Berks County, PA.


Karl Morell

BALL JANIK LLP

EXHIBIT 1

A T T O R N E Y S

**1455 F STREET, NW, SUITE 225
WASHINGTON, D C 20005**

www.balljanik.com

TELEPHONE 202 638-3307

FACSIMILE 202 783 6947

KARI MORELL

kmorell@bjllp.com

December 19, 2008

Via E-Mail

**James Savage
John D. Heffner, PLLC
1750 K Street, NW
Suite 200
Washington, DC 20006**

**Rc. STB Docket No. AB-1020X, East Penn Railroad, LLC – Abandonment
Exemption – In Berks and Montgomery Counties, Pennsylvania**

Dear Mr. Savage:

The purpose of this letter is two-fold.

First, in light of the Board's November 18, 2008 decision in this proceeding finding that neither East Penn Railroad, LLC ("ESPN") nor Berks County had supported their respective real estate valuations, ESPN decided to retain an expert to conduct an appraisal of the right-of-way. We received a copy of the appraisal yesterday and are still in the process of reviewing it. Nevertheless, we can inform you at this time that the real estate on the right-of-way has an appraised value of \$1,241,400. In addition, as you know, ESPN has a binding salvage contract which values the track and track materials at \$1,082,000, net of all removal, transportation and restoration of grade crossing costs.

Second, since we have not heard from you since you filed the OFA, we are inquiring whether Berks County is still interested in acquiring the rail line and, if so, whether Berks County has any desire to negotiate a purchase price.

Morell, Karl

From: Jim Savage [jsavagelaw@aim.com]
Sent: Friday, December 19, 2008 3:04 PM
To: Morell, Karl
Subject: Re: 12-19-08 AB-1020X.pdf - ESPN - Abandonment - Berks

Receipt of yours of 12/19/08 re: negotiations is acknowledged. Yes, the County remains interested in purchasing the Line. We are taking your inquiry under advisement and will get back to you as soon as reasonably possible given that the Holidays are upon us. In the interim, any additional information regarding ESPN's appraisal would be most appreciated. Pending the County's response to your demand letter, which through simple addition I deduce to be in the mount of \$2,323,400, the County's offer of \$500,000 remains on the table, without prejudice to be withdrawn should the County's ongoing investigation disclose that the Line possesses a lesser value than the amount offered, in which case we will so notify you in writing.

James H. M. Savage, Esq.
Attorney at Law
1750 K Street, N.W. - Suite 200
Washington, DC 20006
Tel. (202) 296-3333
Fax (202) 296-3939
jsavagelaw@aim.com

PLEASE TAKE NOTICE: The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you receive this transmission in error, please contact the sender immediately and delete the material from any computer.

-----Original Message-----

From: Morell, Karl <kmorell@balljanik.com>
To: Jim Savage <jsavagelaw@aim.com>
Sent: Fri, 19 Dec 2008 1:18 pm
Subject: 12-19-08 AB-1020X.pdf - Adobe Acrobat Standard

<<12-19-08 AB-1020X.pdf>>

Karl Morell
Of Counsel
Ball Janik LLP
1455 F Street, NW
Suite 225
Washington, DC 20005
kmorell@dc.bjllp.com
Tel: 202-638-3307
Fax: 202-783-6947

Please be advised that, to the extent this communication contains any advice or opinions concerning federal tax matters, it is not intended to be, and may not be, used or relied upon by any taxpayer for the

SUMMARY REAL ESTATE APPRAISAL

APPRAISAL OF
COLEBROOKDALE RAILROAD
RIGHT OF WAY (LAND ONLY)
MONTGOMERY AND BERKS COUNTIES,
PENNSYLVANIA

DATE OF VALUATION: DECEMBER 1, 2008

PREPARED FOR:

ALFRED M. SAUER
VICE PRESIDENT
EAST PENN RAILROAD, LLC.
505 SOUTH BROAD STREET
KENNETT SQUARE, PA 19348

PREPARED BY:

WILLIAM S. YETKE
WILLIAM YETKE, REAL ESTATE
1315 WALNUT STREET, SUITE 808
PHILADELPHIA, PA 19107

WILLIAM YETKE

REAL ESTATE CONSULTANT AND APPRAISER

SUITE 808 1315 WALNUT STREET

PHILADELPHIA PENNSYLVANIA 19107

PHONE: 215-546-3241. FAX: 215-546-3879

December 16, 2008

Alfred M. Sauer
Vice President
East Penn Railroad, Llc.
505 South Broad Street
Kennett Square, Pa 19348

Re: Colebrookdale Railroad Right of Way (land only),
Montgomery and Berks Counties, Pennsylvania

Dear Mr. Sauer:

As requested, I have inspected and appraised the above referenced property for the purpose of estimating its market value. The date of valuation is December 1, 2008, the date of inspection. The total market value estimate is given on the first page of the narrative report that follows.

The appraisal was made subject to the special, general, and specific assumptions and limiting conditions, and certifications set forth in the following report. The appraisal was completed based on the Scope of Work described in the following Summary report. The appraisal analysis and report were completed in conformance with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) of The Appraisal Foundation.

Sincerely yours,



William S. Yetke
MAI, SRA

MEMBER

APPRAISAL INSTITUTE

MAI SRA

SUMMARY OF IMPORTANT DATA AND CONCLUSIONS

TYPE OF PROPERTY: Railroad right of way (land only)

LOCATION: From the southerly end at the Main Line of the Norfolk Southern Railroad in the Borough of Pottstown, PA through West Pottsgrove Township, Montgomery County, and continuing through Douglas Township, Colebrookdale Township and ending in Boyertown Borough, all in Berks County, PA.

PRESENT OWNER: East Penn Railroad, LLC

PRESENT USE: Former operating railroad; now in the process of abandonment

LENGTH: 8.6 miles, or 45,408 l.f.

LAND AREA: Approximately 79.928 acres

BUILDINGS/STRUCTURES: Existing railroad improvements (track, tie, ballast, etc.) and scattered site improvements
All of the above were not considered in the appraisal analysis

ZONING: Various zoning districts - see Physical Description section of following narrative report

DATE OF VALUATION: December 1, 2008

HIGHEST AND BEST USE: Varies depending on the individual parcels comprising the whole

PROPERTY RIGHTS APPRAISED: Fee simple estate

TOTAL VALUE ESTIMATE: See first page of the following narrative report

Table of Contents

Title Page	1
Letter of Transmittal	2
Summary of Important Data and Conclusions	3
Table of Contents	4
Total Market value Estimate	5
Identification of Subject Property	5
Special Assumptions and Limiting Conditions	5
Location Map	6
Purpose of the Appraisal	7
Dates of Inspection and Effective Date of Appraisal	7
Client, Intended Use, and Intended User(s)	
of Appraisal Report	7
Property Rights Appraised	7
Type of Appraisal Report	7
Definition of Market Value	8
Scope of Work	8
Area and Neighborhood Description	9
Market Trends	12
Estimate of Exposure Time	13
Physical Description - Parcels 1 -13	13
Environmental Issues	43
Zoning	43
Real Estate Assessment and Taxes	43
Legal Description	44
Ownership, History and Occupancy	44
Highest and Best Use	44
Valuation Analysis	45
Valuation Methodology - Sales Comparison Approach	45
Valuation of Subject Right of Way by the Across the	
Fence Technique of the Sales Comparison Approach	47
Sales Grids 1-13	49
Total Across the Fence Valuation	62
Valuation Summary - Parcels No. 1-13	63
Assumptions and Limiting Conditions	64
Certification	67
Exhibits	69
Descriptions of Comparable Land Sales Data	70
Qualifications of the Appraiser	75

APPRAISAL OF COLEBROOKDALE RAILROAD RIGHT OF WAY (LAND ONLY)
MONTGOMERY AND BERKS COUNTIES, PENNSYLVANIA

TOTAL MARKET VALUE ESTIMATE

Total market value estimate: \$1,241,400

IDENTIFICATION OF SUBJECT PROPERTY

The property valued in this appraisal consists of the land comprising the right of way of the Colebrookdale Railroad, a branch of the former Reading Railroad. It extends from Milepost 0 at the Main Line of the Norfolk Southern Railroad in Pottstown Borough, Montgomery County, PA to Milepost 8.6 in the northerly end of Boyertown Borough, Berks County, PA. From the southerly end, it also passes through portions of West Pottsgrove Township, Montgomery County, PA and Douglas and Colebrookdale Townships, Berks County, PA. The approximate 8.6-mile right of way was appraised based on fee simple title. The total land area is approximately 79.928 acres.

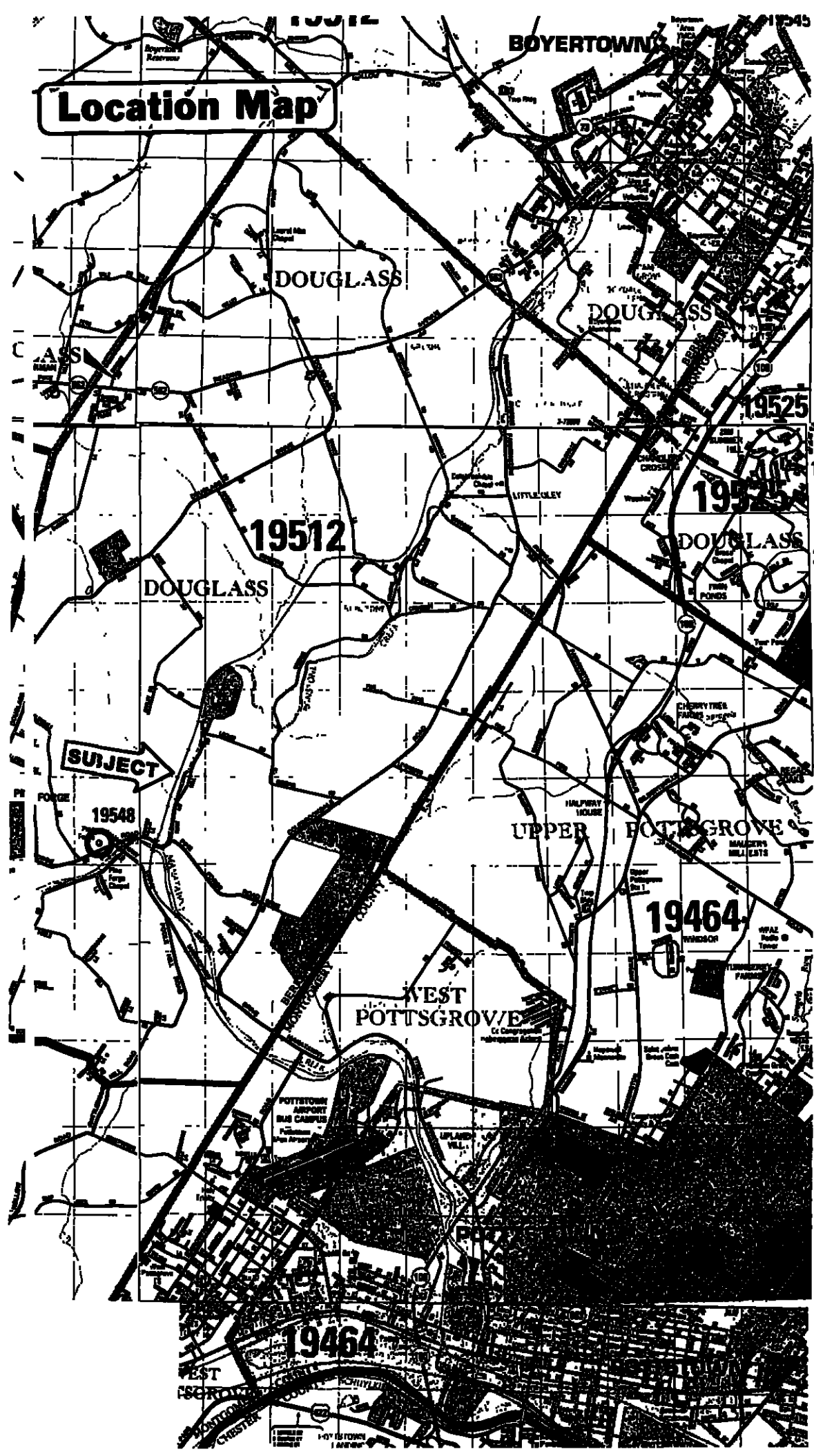
SPECIAL ASSUMPTIONS AND LIMITING CONDITONS

The land areas used in this appraisal were calculated by the appraiser using right of way plans provided by the client. The total land area excludes existing street/road crossings, overpasses and underpasses.

In this appraisal, no consideration was given to any buildings, structures, rail, tie, ballast, culverts, pipes, drainage systems, bridges, fences, and any and all signs, stored materials, or any other site improvements unless specifically described and included in this appraisal. Existing or proposed leases of any portion of the subject right of way have not been taken into account in this appraisal.

Any and all rights to existing underground fiber optic lines and/or other utility lines were not considered in this appraisal and are reserved to the owner, East Penn Railroad, LLC. Any income and expenses relating to above ground and/or buried utility lines have not been considered in this appraisal.

Location Map



No consideration was given to the effect of any debris, trash or waste material located within the subject right of way or the cost of removing the same.

PURPOSE OF THE APPRAISAL

The purpose of the appraisal is to estimate the market value of the subject right of way as of the date of valuation.

DATES OF INSPECTION AND EFFECTIVE DATE OF APPRAISAL

Dates of inspection:	December 1 & 2, 2008
Date of valuation:	December 1, 2008
Date of appraisal report:	December 16, 2008

CLIENT, INTENDED USE, AND INTENDED USER(S) OF APPRAISAL REPORT

The client is East Penn Railroad, LLC. The use of the appraisal is for planning purposes and for possible disposition of the property appraised. The use of this report is intended for the client only and its use by others, and for other purposes, is not intended.

PROPERTY RIGHTS APPRAISED

The right of way was valued based on fee simple property rights, subject to the usual utility easements and connections, if any, and subject to the usual zoning and governmental regulations. As indicated previously, any rights and interests to buried fiber optic lines, and/or other buried or above ground utility lines, crossings, grants and/or occupations have been reserved to the present owner, East Penn Railroad, LLC. No consideration was given to any income and expenses associated with possible sources of income such as easements, leases, utility corridors and/or crossings, outdoor advertising signs, or other uses of the right of way.

TYPE OF APPRAISAL REPORT

A Summary appraisal report was prepared.

DEFINITION OF MARKET RENTAL VALUE

Market is defined as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- buyer and seller are typically motivated;
- both parties are well informed or well advised, and acting in what they consider their own best interests;
- a reasonable time is allowed for exposure in the open market;
- payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(Source: Uniform Standards of Professional Practice, 2003 Edition, The Appraisal Foundation)

SCOPE OF WORK

The purpose of the appraisal is to estimate the market value of the subject property. The appraisal is to be used by the client for planning purposes and possible disposition of the property.

The information and data used in this appraisal were researched and obtained by the appraiser. Independent analyses were made by the appraiser. Information, including market data and trends, was obtained specifically for this appraisal but updated information on file may also have been used.

In describing and analyzing the neighborhood, the greater subject area and market trends, the appraiser has

relied on his firsthand knowledge based on his appraisal business. Also, information was obtained from various sources including owners, buyers, sellers, real estate brokers, and publications including specific real estate publications, business periodicals and newspapers. Published studies relating to market trends and characteristics may have been considered as well.

The property appraised was personally inspected by the appraiser. Photographs were taken of the property and the immediate environs. Available information including right of way plans, tax maps and other descriptive material was reviewed and used where appropriate.

Market data, including but not limited to sales data, asking prices, and market trends were obtained from information on file and from real estate appraisers, brokers, sellers, and buyers. Multiple listing services as well as other market data sources were referenced. Public records were accessed as needed.

Upon consideration of the three approaches to estimating value, the market value analysis was completed using the Sales Comparison Approach. The Cost and Income Approaches to estimating value were not applicable. In agreement with the client, the Sales Comparison Approach was applied using the technique known as the "across-the-fence" method, a valuation technique applicable to valuation of rights of way. The valuation was based on land sales data and overall land value trends for similar types of land including market data assembled for the valuation of a similar former railroad right of way in a nearby location in Berks County. Some of the sales were verified with one of the principal parties to the transaction but not all. A narrative appraisal report was prepared in the Summary format.

AREA AND NEIGHBORHOOD DESCRIPTION

The property appraised is an 8.6-mile railroad right of way located in Montgomery and Berks Counties in southeastern Pennsylvania. At its southerly end, the right of way begins in the long established built-up community of Pottstown Borough, Montgomery County, PA. It then passes through an area of low density development along Manatawny Creek in adjacent West Pottsgrove Township, also in Montgomery County, PA. From West Pottsgrove the subject railroad right of way passes into Berks County and runs

through lightly developed rural and suburban areas of Douglas and Colebrookdale Townships. There are also several nearby industrial districts with mostly older industrial properties. The northerly end of the Colebrookdale Railroad ends in the Borough of Boyertown, Berks County, PA. Like Pottstown, Boyertown is long established built-up community with a wide range of existing development and property types.

Brief descriptions of the five communities in which the subject property is located are given below.

Pottstown Borough, Montgomery County, PA

Located in western Montgomery County and situated across the Schuylkill River from Chester County, Pottstown developed long ago as a manufacturing center. Like many similar communities, it has lost much of its manufacturing base but continues as an urban center for western Montgomery County, southeastern Berks County, and northern Chester County. Pottstown's population in 2000 was 21,859 persons. The population remained stable over the previous decade. The 1990 population was 21,831. The borough grew by 28 persons over the intervening decade. Information published in 2007 by the Montgomery County Planning Commission indicates that the population declined to 21,681 by 2005 but is projected to increase to 21,934 by 2010. For 1999, the latest data available, Pottstown had the following income characteristics: median family income was \$45,734; median household income was \$35,785; and per capita income was \$19,078. These figures substantially lagged those for the county as a whole which had respective income levels of \$72,183, \$60,829 and \$30,898.

West Pottsgrove Township, Montgomery County, PA

Located between Pottstown Borough and Berks County, PA in western Montgomery County, West Pottsgrove Township is also situated across the Schuylkill River from Chester County. West Pottsgrove Township is more urbanized in its southern end near the Schuylkill River and important traffic routes including Ben Franklin Highway and US Route 422. The township is more suburban in character in its northern portion. The population of West Pottsgrove Township in 2000 was 3,815 persons. This represented a small decrease from 1990 when the population was 3,829 persons. Information published in 2007 by the Montgomery County Planning Commission indicates that the population increased to 3,856 by 2005 and is projected to increase to 3,922 by 2010. For 1999, the latest data available, West

Pottsgrove Township had the following income characteristics: median family income was \$52,177; median household income was \$42,759; and per capita income was \$18,413. These figures substantially lagged those for the county as a whole which had respective income levels of \$72,183, \$60,829 and \$30,898. The median family and median household income levels surpassed those for adjacent Pottstown Borough but the per capita income for West Pottsgrove Township was less than that for Pottstown.

Douglas Township, Berks County, PA

Located along the southeasterly side of Berks County, Douglas Township lies north of Pottstown Borough and south of Boyertown Borough. Its southern end borders the Schuylkill River and is across the river from Union Township, Berks County. Douglas Township is suburban and rural in character. Commercial and industrial districts are in only scattered locations. The population of Douglas Township in 2000 was 3,327 persons. This represented a 6.8% decrease from 1990 when the population was 3,570 persons. Information published in 2003 by the Berks County Planning Commission indicates that the population is projected to increase to 3,524 by 2010. For 2000, the latest data available, Douglas Township had the following income characteristics: median family income was \$55,573; median household income was \$52,306; and per capita income was \$22,896. These figures surpassed those for the county as a whole which had respective income levels of \$52,997, \$44,714 and \$21,232.

Colebrookdale Township, Berks County, PA

Colebrookdale Township wraps around Boyertown Borough in southeastern Berks County. It lies north, west and south of Boyertown and adjoins Douglas Township, Montgomery County to the east. Colebrookdale Township is mostly suburban and rural in character but has some small built-up urbanized areas close to Boyertown Borough. The population of Colebrookdale Township in 2000 was 5,270 persons. This represented a 3.6% decrease from 1990 when the population was 5,469 persons. Information published in 2003 by the Berks County Planning Commission indicates that the population is projected to increase to 5,583 by 2010. For 2000, the latest data available, Colebrookdale Township had the following income characteristics: median family income was \$60,407; median household income was \$54,238; and per capita income was \$23,208. These figures well surpassed those for the county as a whole which had respective income levels of \$52,997, \$44,714 and \$21,232.

Boyertown Borough, Berks County, PA

Boyertown Borough is situated in southeastern Berks County and adjoins Douglas Township, Montgomery County to the east. Boyertown and Pottstown Boroughs are the principal urban locations in the immediate area of southeastern Berks County and western Montgomery County. Like Pottstown Borough, Boyertown developed long ago as a manufacturing center but has lost much of its manufacturing base. With a wide mix of land uses, Boyertown is the retail center for the area. The population of Boyertown Borough in 2000 was 3,940 persons. Contrary to population trends for many similar older communities, Boyertown experienced an increase from its 1990 population of 3,759 persons. This represented a 4.8% increase. Information published in 2003 by the Berks County Planning Commission indicates that the population is projected to increase further to 4,174 by 2010. For 2000, the latest data available, Boyertown Borough had the following income characteristics: median family income was \$52,943; median household income was \$39,232; and per capita income was \$21,194. Compared to the county as a whole, the median family income for the borough nearly matched that for the county of \$52,997 but the median household income lagged the county level of \$44,714. The borough and county had similar per capita income levels.

Description of Immediate Area

In addition to the overall descriptions given in this section of the report, the land uses located along or near the subject right of way are described in the Physical Description section of the report. As described therein, the descriptions are given on a parcel by parcel basis.

Market Trends

Common to most areas of the region and state, the five communities through which the subject right of way passes experienced positive overall real estate market trends in past years leading up to the period of stabilization in late 2007 and 2008. Given current conditions in financial and real estate markets, the expectation is for a fall-off in prices, values and activity. This has happened to some degree in many markets. Despite expectations, the market research for this appraisal shows activity relative to land sales has continued and well into 2008. Based on market transactions considered through current date, there is no particular pattern of price reversals. Given efforts to reverse current financial

conditions, market conditions could stabilize and possibly improve. If these efforts are not meaningful, market trends could definitely trend downwards and possibly severely. Going forward, price trends are presently very unpredictable, particularly for land. Sales activity has lessened, at least for the immediate term.

The market for assembled rights of way is characterized by generally unpredictable supply and demand patterns due to its special purpose nature. At any particular time, few railroad rights of way are available for sale or for re-use and the pool of potential buyers also tends to be small, especially compared to other segments of the real estate market. Nevertheless, over the long term, this type of real estate has tended to become more marketable as fewer rights of way are made available and demand for various uses of similar properties has shown an overall increase. These observations are tempered by the current uncertain market conditions described above.

Estimate of Exposure Time

Estimated exposure period: approximately one year.

PHYSICAL DESCRIPTION

The subject property is 8.6-mile railroad right of way having a total land area of 79.928 acres. It extends from its beginning (MP 0) at the interchange with the Norfolk Southern Railroad south of High Street in Pottstown Borough, Montgomery County, PA to its present terminus at approximately MP 8.6 near North Reading Avenue in Boyertown Borough, Berks County, PA.

For valuation purposes, the right of way has been allocated into 13 parcels based on zoning, land use, road crossings and other relevant factors. The Physical Description is given on a parcel by parcel basis.

PARCEL 1

Length: .12 mile
 Location: Main line of Norfolk Southern Railroad to South side of King Street, Pottstown Borough, Montgomery County, PA.
 Land Area: Approximately .997 acres (excluding street crossing(s))
 Width: 80 feet
 Street Frontage/ Access: Approximately 120 feet on the south side of High Street
 Approximately 102 feet on the north side of High Street
 Approximately 80 feet on the south side of King Street
 Waterways: None
 Elevation: Above grade at High Street
 At grade with King Street
 Topography: Level area at interchange with Norfolk Southern Railroad; running onto an embankment at High Street
 Above and at grade with land to the west
 Above grade with land to the east
 Adjoining Land Use and/or Land Cover: Railroad yard and vacant land south of High Street
 Historic site (Pottsgrove Manor mansion) on west side between High and King Streets
 Highway retail and service commercial to the east between High and King Streets
 Zoning: GW, Gateway West
 Floodplain Information: Lower portions of the land may be in the 100-year flood zone.
 Wetlands: None

PARCEL 1

Looking northwesterly from MP 0 along right of way
and bridge over High Street



Looking southerly across King Street

PARCEL 2

Length: .442 mile
Location: Northerly side of King Street to southeast side of PA Route 100, Pottstown Borough, Montgomery County, PA
Land Area: Approximately 4.473 acres (excluding street crossing(s))
Width: Varies from 70 and 102 feet
Street Frontage/ Access: Approximately 68 feet on the north side of King Street
 Approximately 170 feet along southeast side of PA Route 100
Waterways: Manatawny Creek runs along the easterly side of the northerly end of this parcel
Elevation: At grade at King Street and PA Route 100
Topography: The right of way runs along a moderate slope towards the southerly end and along more steeply sloping land towards the northerly end
 A portion of the parcel slopes down to Manatawny Creek
Adjoining Land Use And/or Land Cover: A motel, small retail shopping center, other retail properties and some service commercial and industrial properties are to the west
 A public park and vacant land including Manatawny Creek are along the easterly side
Zoning: P, Park
 An HB, Highway Business district adjoins to the west
Floodplain Information: A 100-year flood zone is indicated along the easterly side of the right of way along the middle and northerly portions of the parcel
Wetlands: None known although possible low lying sections along the easterly side of the parcel may potentially be wetlands

PARCEL 2

View northwesterly across King Street



View to the south from PA Route 100

PARCEL 3

Length: .72 mile
Location: Northeasterly side of PA Route 100 to Pottstown Borough/West Pottsgrove Township line, Pottstown Borough, Montgomery County, PA
Land Area: Approximately 10.765 acres (excluding street crossing(s))
Width: Varies from 70 and 297 feet
Street Frontage/Access: Approximately 160 feet along northwest side of PA Route 100
 Approximately 70 feet on the south and north sides of Glasgow Road
Waterways: Manatawny Creek runs along or near the easterly side of the right of way
Elevation: At grade at PA Route 100
 Below grade of Glasgow Road
Topography: The right of way runs along generally steeply sloping land that slopes down to Manatawny Creek
 The rail bed is on a bench or passes through some cuts along the sloping land
Adjoining Land Use and/or Land Cover: Generally the immediate area along the right of way is wooded. Manatawny Creek flows along the easterly side with mostly older single-family residences, vacant land and some farms across the creek including the village of Glasgow. To the west are industrial and office properties in the Tri-County Business Campus and some residential areas.
Zoning: NR, Neighborhood Residential
Floodplain Information: Low lying sections of the parcel along Manatawny Creek are in or near the 100-year flood zone. Over four acres of low-lying land along the easterly side of the right of way north of PA Route 100 are in the 100-year flood zone.
Wetlands: Possible wetlands, particularly along low lying portions of the parcel adjacent to Manatawny Creek including the approximate four acres of low land adjacent to the creek

PARCEL 3, continued



View northerly from a point north of PA Route 100



View northerly towards the Glasgow Road bridge
with Manatawny Creek to the right

PARCEL 3, continued



View towards the northerly end of Parcel 3 from a point
north of Glasgow Road

PARCEL 4

Length: .18 mile
 Location: From Pottstown Borough/West Pottsgrove Township line to a point about 660 feet northwest of Milepost 1-1/2, West Pottsgrove Township, Montgomery County, PA
 Land Area: Approximately 1.332 acres (excluding street crossing(s))
 Width: 60 feet
 Street Frontage/ Access: None
 Waterways: None: Manatawny Creek is a short distance northeast of the right of way
 Topography: The parcel runs along sloping land
 Adjoining Land Use and/or Land Cover: Generally the immediate area along the right of way is wooded. Mixed industrial and residential uses along the southwesterly and southerly sides. Manatawny Creek flows along the easterly side with generally older single-family residences, vacant land and some farms across the creek.
 Zoning: LI, Limited Industrial
 Floodplain Information: Parcel 4 does not appear to be in a designated flood zone but the 100-year flood zone along Manatawny Creek is just beyond the parcel.
 Wetlands: None apparent; some possible in low-lying land areas

PARCEL 4

Looking southwesterly across Manatawny Creek from
Manatawny Street at Parcel 4 along the far embankment

PARCEL 5

Length: 1.445 miles
Location: From a point about 660 feet northwest of Milepost 1-1/2 to a point about midway between Mileposts 3 and 3-1/4, West Pottsgrove Township, Montgomery County and Douglas Township, Berks County. PA
Land Area: Approximately 11.409 acres (excluding street crossing(s))
Width: Varies between 60 and 100 feet
Street Frontage/Access: Approximately 62 feet on southeasterly and northwesterly sides of Grosstown Road
 Approximately 200 feet on southwesterly and northeasterly sides of Manatawny Road
Waterways: Manatawny Creek runs adjacent to and near the generally northerly side of Parcel 5
 Several small creeks cross the parcel emptying into Manatawny Creek
Elevation: Above grade at Grosstown Road
 At grade at Manatawny Road
Topography: The right of way runs mostly through an area of steep and moderate slopes on a bench or through moderate cuts
 The overall topography is sloping land down to Manatawny Creek
Adjoining Land Use and/or Land Cover: Mostly wooded with some nearby older residences. There is a greater incidence of residences and farms across Manatawny Creek and Manatawny Road from Parcel 5.
Zoning: R-1, Residential in West Pottsgrove Township
 R-1, Rural Suburban Residential in Douglas Township
Floodplain Information: Fringe areas along the lower levels of Parcel 5 on or near Manatawny Creek may be in the 100-year flood zone.
Wetlands: Possible wetlands in the fringe areas along the lower levels of Parcel 5 on or near Manatawny Creek

PARCEL 5



View to southeast across Manatawny Road and
Manatawny Creek at Parcel 5 along far hillside



Looking southeasterly at Parcel 5 from
a point southeast of Manatawny Road

PARCEL 5



Looking northwesterly across Manatawny Road at Parcel 5

PARCEL 6

Length: .366 mile
Location: From a point about midway between Mileposts 3 and 3-1/4 to south side of Pine Forge Road, Douglas Township, Berks County, PA
Land Area: Approximately 3.221 acres (excluding street crossing(s))
Width: Varies between 60 and 120 feet
Street Frontage/ Access: Approximately 70 feet on south side of Pine Forge Road
Waterways: Manatawny Creek passes through Parcel 6 along the southerly side of Pine Forge Road
Elevation: Above grade at Pine Forge Road
Topography: The right of way runs along sloping land and onto an embankment at Manatawny Creek
Adjoining Land Use and/or Land Cover: Mostly wooded land except for an existing industrial property on the westerly side south of Pine Forge Road
Scattered rural residences
Zoning: I-2, General Industrial
Floodplain Information: Possible fringe flood plain areas where Manatawny Creek passes through Parcel 6
Wetlands: Possible wetlands along low-lying fringe areas

PARCEL 6

View to the south along Parcel 6 from the bridge
over Manatawny Creek and Pine Forge Road

PARCEL 7

Length: 2.6 miles
Location: From north side of Pine Forge Road to southwest side of Greshville Road, Douglas Township, Berks County, PA
Land Area: Approximately 25.057 acres (excluding street crossing(s))
Width: Varies between 60 and 180 feet
Street Frontage/Access: Approximately 70 feet on north side of Pine Forge Road
 Approximately 115 feet on the south and north sides of Grist Mill Road
 Approximately 105 feet on the southwest and northeast sides of Ironstone Road
 Approximately 220 feet on the north side of Birch Lane
 Approximately 65 feet on west side of Greshville Road
Waterways: Ironstone Creek is adjacent or near the easterly and southeasterly side of the subject parcel from Pine Forge Road to a point about ¼ mile north of Grist Mill Road and from a point east of Spruce Lane (extended) to a point near Milepost 5-7/8.
Elevation: Several smaller creeks cross Parcel 7. Above grade at Pine Forge Road, Grist Mill Road, and Ironstone Road
 Below grade where Spruce Lane deadends at the subject parcel and along Birch Lane
Topography: At grade at Greshville Road
 Parcel 7 runs along hilly land with the rail bed on benches or moderate cuts along the hillsides. There is a deep cut where it passes the present terminus of Spruce Lane. South of Greshville Road, it passes through open gently sloping tillable farmland.
Adjoining Land Use and/or Land Cover: Mostly wooded vacant land with scattered adjacent rural residences ranging from older homes and farmhouses to new single-family dwellings including some estate-type properties.

PARCEL 7, continued

The Ironstone Recreational Area is on the southeasterly side of the parcel at Grist Mill Road.

Zoning: AP, Agricultural Preservation; R-3, Rural Conservation; R-2, Rural Residential; and R-1, Rural Suburban Residential

Floodplain Information: Some fringe areas may be in or near the designated 100-year flood interval where Ironstone Creek passes close to Parcel 7.

Wetlands: Possible minor wetlands in low-lying areas including those adjacent to Ironstone Creek. No specific information was available about wetlands.



View to the north at Parcel 7 from bridge over
Manatawny Creek and Pine Forge Road

PARCEL 7, continued



View southerly across bridge over creek near
Milepost 3-3/4. Ironstone Creek is to the left.



View to the northeast across bridge over Grist Mill Road

PARCEL 7, continued



View northeasterly across the bridge over Ironstone Road



View to the southwest from Greshville Road

PARCEL 8

Length: .87 mile
Location: From northeasterly side of Greshville Road to westerly side of Farmington Avenue, Douglas Township, Berks County, PA
Land Area: Approximately 9.294 acres (excluding street crossing(s))
Width: Varies from 60 feet to 140 feet wide
Street Frontage/ Access: Approximately 65 feet on the northeasterly side of Greshville Road
 Approximately 120 feet on the westerly side of Farmington Avenue
Waterways: Ironstone Creek runs along part of easterly side of Parcel 8
Elevation: At grade at Grenville Road
 Above road grade at Farmington Avenue
Topography: Varies from gently sloping land at Greshville Road to hilly land and onto an embankment at Farmington Avenue
Adjoining Land Use and/or Land Cover: Scattered rural residences; some farmland; wooded hilly land; industrial district along Farmington Avenue
Zoning: I-1, Limited Industrial
Floodplain Information: Possible fringe areas in or near the 100-year flood zone along Ironstone Creek
Wetlands: Possible wetlands in low-lying areas including those adjacent to Ironstone Creek. No specific information was available about wetlands.

PARCEL 8



View to the northeast from Greshville Road



View northerly along Farmington Avenue with
Parcel 8 to the left of the overpass

PARCEL 9

Length: .72 mile
Location: From easterly side of Farmington Avenue to Douglas Township/Boyertown Borough line, Douglas Township, Berks County, PA
Land Area: Approximately 6.706 acres (excluding street crossing(s))
Width: Varies between 50 and 100 feet
Street Frontage/Access: Approximately 120 feet on the easterly side of Farmington Avenue
 Approximately 130 feet on the westerly side of Mill Street
 Approximately 110 feet on the easterly side of Mill Street
Waterways: Ironstone Creek runs along part of Parcel 9 and then crosses the parcel just south of Mill Street
Elevation: Above grade at Farmington Avenue
 Above grade at Mill Street
Topography: The right of way runs from being on an embankment at Farmington Avenue into hilly land and is also on an embankment at Mill Street. North of Mill Street, it runs along steeply sloping land and then onto generally level or gently sloping land
Adjoining Land Use and/or Land Cover: Older mixed land uses along Farmington Avenue including the Sportsmen's Paradise property
 Built-up section of older land uses including modest housing near Mill Street
 Also some newer hillside housing
 Northerly end of Parcel 9 is in a long established industrial and service commercial section with adjacent older homes
Zoning: R-4, High Density Residence
Floodplain Information: Possible fringe areas of flood plain where parcel 9 is adjacent or near Ironstone Creek
 100-year flood zone where Ironstone Creek crosses the parcel

PARCEL 9

Wetlands: Possible fringe wetlands along sections of the Parcel 9 adjacent to Ironstone Creek and where Ironstone Creek crosses the parcel



View northeasterly across bridge over Farmington Avenue

PARCEL 9

View northwesterly at bridge over Ironstone Creek
on Parcel 9 from Mill Street



View to the northeast at Parcel 9 from Mill Street

PARCEL 10

Length: .31 mile
 Location: From Douglas Township/Boyertown
 Borough line to southwest side of 2nd
 Street, Boyertown Borough, Berks County,
 PA
 Land Area: Approximately 2.239 acres (excluding
 street crossing(s)
 Width: 60 feet
 Street Frontage/
 Access: Approximately 65 feet on the on the
 southwest side of 2nd Street
 Waterways: None
 Elevation: Below grade at 2nd Street
 Mostly at grade with adjacent land
 Topography: From the southerly end where Parcel 10
 is cut along sloping hilly land, it
 passes into a larger area of gently
 sloping and generally level land
 Adjoining Land Use
 and/or Land
 Cover: A mix of older and newer urban land uses
 including some adjacent vacant land
 Zoning: M-1, General Industrial
 Floodplain
 Information: Not in or near a designated flood zone
 Wetlands: None



Looking southwesterly at Parcel 10
 from the 2nd Street overpass

PARCEL 11

Length: .27 mile
Location: From northeasterly side of 2nd Street to southwesterly side of 4th Street, Boyertown Borough, Berks County, PA
Land Area: Approximately 1.814 acres (excluding street crossing(s))
Width: Varies between 42 and 60 feet
Street Frontage/Access: Approximately 65 on northeasterly side of 2nd Street
 Approximately 40 on southwesterly side of 3rd Street
 Approximately 60 on northeasterly side of 3rd Street
 Approximately 60 on southwesterly side of an alley
 Approximately 55 on northeasterly side of an alley
 Approximately 47 on southwesterly side of Philadelphia Avenue
 Approximately 55 on northeasterly side of Philadelphia Avenue
 Approximately 80 on southwesterly side of 4th Street
Waterways: None
Elevation: Below grade at 2nd Street
 At grade at 3rd Street, an alley, and Philadelphia Avenue
 Above grade at 4th Street
Topography: Parcel 10 is in a cut below grade of adjoining land north of 2nd Street
 Just north of 2nd Street, the subject land is in an area of generally level land until it approaches 4th Street where it is on an embankment
Adjoining Land Use and/or Land Cover: A mix of older and newer urban land uses including some adjacent vacant land
 Built-up retail district along Philadelphia Avenue which is the main east-west traffic route through the center of Boyertown
Zoning: C-2, Secondary Commerce
 C-1, Central Commerce
Floodplain Information: Not in or near a designated flood zone
Wetlands: None

PARCEL 11

View northeasterly from 2nd Street overpass



View southwesterly from Philadelphia Avenue

PARCEL 11



View to the northeast from Philadelphia Avenue

PARCEL 12

Length: .18 mile
 Location: From northeasterly side of 4th Street to Milepost 8-1/2, Boyertown Borough, Berks County, PA
 Land Area: Approximately 1.758 acres (excluding street crossing(s))
 Width: 80 feet
 Street Frontage/ Access: Approximately 80 feet on the northeast side of 4th Street
 Waterways: None
 Elevation: Above street grade at 4th Street
 Topography: On embankment at 4th Street
 On modest embankment or in modest cut as the parcel passes through sloping land
 Adjoining Land Use and/or Land Cover: Built-up mix of older urban land uses including larger industrial properties
 Zoning: M-1, General Industrial
 Floodplain Information: None
 Wetlands: None



Looking northerly across the 4th Street bridge at Parcel 12

PARCEL 13

Length: .01 mile
 Location: From Milepost 8-1/2 to terminus of
 Colebrookdale Branch at approximately
 Milepost 8-3/8, Boyertown Borough, Berks
 County, PA
 Land Area: Approximately .863 acre (excluding
 street crossing(s))
 Width: 80 feet
 Street Frontage/
 Access: No direct street access
 Waterways: None
 Elevation: Slightly above and below grade of
 adjacent land
 Topography: The right of way runs through gently
 sloping land
 Adjoining Land Use
 and/or Land
 Cover: Built-up mix of older urban land uses
 including larger industrial properties
 and residential dwellings
 Zoning: C-2, Secondary Commerce
 Floodplain
 Information: None
 Wetlands: None



Looking northerly along Parcel 13 near the
northern terminus of the Colebrookdale Railroad

ENVIRONMENTAL ISSUES:

No adverse environmental conditions were observed on the appraised property. No information was furnished about the environmental status of the land. Given the history of the subject property as railroad land used for rail operations, the subject land may be susceptible to types of contamination associated with railroad properties. However, for appraisal purposes, it is assumed that the land is environmentally safe. The appraiser is not qualified to do an environmental evaluation. Should there be a finding to the contrary, this appraisal would be subject to reconsideration and possible revision, including the final value estimates. Reference is made to the statements about environmental issues given in the Assumptions and Limiting Conditions section of the report. A full examination by an environmental expert is recommended for any interested party.

ZONING

The zoning along the right of way is described in the parcel by parcel descriptions in the Physical Description section of the report. Zoning maps and zoning codes or the appropriated sections of the codes were obtained for use in the appraisal analysis and are being retained in the appraiser's work file. They are included by reference.

REAL ESTATE ASSESSMENT AND TAXES

No tax assessment information could be located for the land in Montgomery County. Following are assessments for land assessed in Berks County, PA.

Boyertown Borough

<u>Tax ID</u>	<u>Area</u>	<u>Total Assessment</u>
33-5387-20-90-0699	7.42 ac.	\$ 24,300

Colebrookdale Township

<u>Tax ID</u>	<u>Area</u>	<u>Total Assessment</u>
38-5386-07-57-8845	5.39 ac.	\$ 17,500

Douglas Township

<u>Tax ID</u>	<u>Area</u>	<u>Total Assessment</u>
41-0000-00-00-0045	41.17 ac.	\$133,800
41-0000-00-00-0048	.95 ac.	\$ 3,000

41-5386-17-21-4308

7.14 ac.

\$ 29,100

All of the above assessments are listed as exempt.

LEGAL DESCRIPTION

No legal descriptions were available.

OWNERSHIP, HISTORY AND OCCUPANCY

The present owner of the subject property is East Penn Railroad, LLC. The Colebrookdale Railroad was acquired from the County of Berks on July 3, 2003 by Penn Eastern Rail Lines, Inc. The deed reference is 3805 page 562. The listed consideration was \$177,000. Penn Eastern Rail Lines, Inc. was subsequently merged into East Penn Railroad, LLC.

The subject real estate was appraised as vacant land and is assumed to be free and clear of any lease encumbrances.

HIGHEST AND BEST USE

Highest and best use has been defined as the reasonably probable and legal use of vacant land, or an improved property, which is physically possible, appropriately supported, financially feasible, and results in the highest value.

The right of way being appraised is being abandoned for railroad purposes. Accordingly, it has been valued based on the highest and best use of the parcels comprising the whole. The parcels have been determined by the appraiser based on a number of market factors and influences including zoning, existing and potential land use, road frontage and access and other physical and functional characteristics. Based on these considerations, the subject right of way was divided into thirteen parcels for valuation purposes, assuming the potential sale of each of the thirteen parcels, probably to different parties. The valuation of each parcel was based on the highest and best criteria described previously.

VALUATION ANALYSIS

The Sales Comparison, Income and Cost Approaches to estimating value were considered in this appraisal. They are the usual methods of estimating the market value of real estate. However, only the Sales Comparison Approach was used. Further, the "across-the-fence" technique of the Sales Comparison Approach for valuing rights of way was used.

The Sales Comparison Approach, using the across-the-fence technique, was the primary method of valuation used in this appraisal. The Sales Comparison Approach is the usual method used to estimate the value of vacant land. Since the Sales Comparison Approach is based on a comparison analysis between the appraised property and recent sales of similar or comparable properties, this method directly reflects market conditions based on actual transactions. The prices paid for the comparable sale properties are the outcome of negotiations between actual market participants.

The Income Approach is an important method for valuing income producing or investment type real estate. It best reflects the investment characteristics of an income producing property. Although land may be leased, this is typically regarded as an interim use, either for the short or long term. In many markets, including that considered in this appraisal, there are not sufficient market rental data for reliably using the Income Approach as a direct method of valuation. When sufficient sales data are available for valuation purposes, it is usually preferable to use the Sales Comparison Approach as was done in this appraisal. The Income Approach was not used.

Since the property being appraised is vacant land, the Cost Approach was not applicable. The Cost Approach is applicable to the valuation of improved properties, particularly those with new or recently constructed buildings and improvements. The Cost Approach was not used.

VALUATION METHODOLOGY - SALES COMPARISON APPROACH

As stated previously, the across-the-fence technique of the Sales Comparison Approach was used to value the subject right of way. The across-the-fence method and across-the-fence value are defined as follows.

Across the fence method - A means of estimating the price or value of land adjacent to or "across-the-fence" from a railroad, pipeline, highway, or other corridor real estate; as distinguished from valuing the right of way as a separate entity.

Across-the-fence value - In the valuation of corridor real estate, the price or value of land adjacent to or "across-the-fence" from a railroad, pipeline, highway, or other corridor real estate.

Source: The Dictionary of Real Estate Appraisal, Third Edition, Appraisal Institute, Chicago, Illinois, 1993, p. 5

In using this technique, recent sales of comparable or similar land are located, researched, and compared to the property being appraised. A comparison analysis is made in which adjustments are considered, and made if necessary, for significant differences between the sale properties and the appraised property. The adjustments made reflect the appraiser's opinion of market reaction in terms of price for substantial differences between the comparables and the property being valued. In using the across-the-fence technique, the usual items of adjustment are considered except for the long, narrow shape of the right of way being considered. After making the necessary adjustments, the adjusted prices of the comparables are used as a basis for estimating the market value of the appraised property. This process is used for each category or parcel of land being valued with zoning being one of the principal determinants of the parcels to be considered.

Typically, the comparison analysis is made on a unit price basis that is common to the type of property being considered and also to the market and locality in which the sales and appraised property are located. In this appraisal, two units of comparison were used. For smaller parcels in the urban areas of Pottstown Borough and Boyertown Borough, the unit of comparison used was price per square foot. For the balance of the land, the unit of comparison was the price per acre.

After completing the comparison analysis, a unit value was estimated for each of the designated parcels of the subdivided right of way and applied to the total area of each parcel. The contributory value estimates made of the subdivided parcels were summed to get the total market value estimate for the entire right of way.

VALUATION OF SUBJECT RIGHT OF WAY BY THE ACROSS THE FENCE
TECHNIQUE OF THE SALES COMPARISON APPROACH

The total area of the land being valued is 79.928 acres. The length of the right of way is 8.6 miles. It is assumed to be vacant and unimproved for valuation purposes. Over its length, the right of way passes through five communities in two counties. Accordingly, it passes through numerous zoning districts including those in the major land use categories of residential, industrial, commercial/retail and open space/conservation. It is located in urban, suburban and rural locations. Along its length, the right of way passes through areas ranging from rural, relatively remote locations to sections of built-up adjoining land uses where the right of way is easily accessible, examples being the sections of right of way passing through the boroughs of Pottstown and Boyertown.

For valuation purposes, the subject land was analyzed based on its physical and locational characteristics, zoning, accessibility, adjoining land uses, and any other pertinent influences. It was then divided into 13 parcels based on the factors and influences described. Typically, each parcel or section had the same or similar zoning. In some cases when the right of way passed through different but similar zoning districts, the parcel designated for valuation purposes may have land in two or more similar zoning categories, such as several similar residential districts, or similar commercial districts. Each designated parcel was valued using the "across-the-fence" technique of the Sales Comparison Approach.

In applying the Sales Comparison Approach to each of the thirteen parcels, the same overall methodology was used. Comparable sales were chosen for each valuation and the sales were compared to the designated subject parcel. Adjustments were considered and made as follows. Initial adjustments included those for property rights conveyed, financing terms, and conditions of sale. The sales were then analyzed and adjusted, if necessary, for additional factors of comparison including the time factor, location, size, and physical characteristics. Other adjustments were considered and made if required. Descriptions of the land sales are given in the exhibits section at the end of the report.

Relative to the time adjustments, generally no adjustments were made to sales that took place during the

period approximating the past year to year and one-half, a period during which sales prices have appeared to stabilize in the land market although activity continued through much of 2008. Based on current conditions, prices may tend to turn downward but no specific evidence showing this potential trend was evident in the sales data researched to date. For earlier transactions, upward adjustments were made to reflect the pattern of improving market conditions common to the land market in prior years but also recognizing the current market influences described above.

Adjustments for location were considered and the unit prices of the comparables were adjusted upwards if the subject parcel had a superior location and downward if the subject parcel had an inferior location.

Adjustments for the size factor were analyzed based on the common market relationship whereby larger parcels often sell at lower unit prices than smaller ones, other things being equal. Stated another way, smaller parcels often sell at higher unit prices than larger ones, other things being equal. Size relationships vary among sales in various categories of zoning, location, and type.

In using the across-the-fence technique specific adjustments for physical characteristics are often not made since the premise is to relate the right of way land to the price level of similar nearby land without adjusting for the particular characteristics of a right of way, i.e. its long narrow configuration. Nevertheless, some physical factors may still be considered such as topography, the occurrence within a flood zone or of significant wetlands.

In the category of "Other," any other items or influences needing consideration are taken into account. Factors such as different zoning, various levels of approvals, or varying potential for development density may have to be considered and adjusted for.

After completing the comparison analysis for each designated parcel, a unit price was estimated and applied to the total area of the parcel to get the total contributory value of that section of the right of way. The final step in the valuation analysis was to total the contributory value estimates of the thirteen parcels to get the total market value estimate for the right of way in its entirety. Following is a Sales Grid for each parcel valued. It summarizes the comparison analysis for each of the thirteen parcels. Following the grids is a summary of the total valuation for the right of way in its entirety.

SALES GRID - PARCEL 1

From: Norfolk Southern Main Line
To: South side King Street
Pottstown Borough
Date of valuation: December 1, 2008
Land area: 0.997 acre
43,429 s.f.

Sale No.	1	2	3
Date of Sale	Apr-08	Feb-08	Jan-07
Location	376 Apple Street Pottstown Borough, Montgomery Co., PA	SES Progress Street, Pottstown Borough, Montgomery Co., PA	ES Morvlew Boulevard Caernarvon Township, Berks County, PA
Consideration	\$40,000	\$360,000	\$152,000
Land Area (s.f.)	7,800	191,664	43,560
Unit Price (per s.f.)	\$5.13	\$1.88	\$3 49
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$5 13	\$1.88	\$3.49
Financing Terms	0%	0%	0%
Adjusted Price	\$5 13	\$1 88	\$3 49
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$5 13	\$1.88	\$3 49
Market Conditions (Time)	0%	0%	plus
Adjusted Price	\$5 13	\$1.88	\$3.66
Other Factors:			
Location	similar	inferior (+)	similar
Size	smaller (-)	larger (+)	similar
Physical characteristics	superior (-)	superior (-)	similar
Other	—	—	—
Net Adjustments	minus	plus	similar
Adjustment Factor	70 0%	135.0%	100.0%
Adjusted Unit Prices	\$3.59	\$2.54	\$3 66
Estimated Unit Value	\$3.00		
Land Area - square feet	43,429		
Total Market Value Estimate:	\$130,287		
Say	\$130,300		

SALES GRID - PARCEL 2

From: North side High Street
To: Southeast side Route 100
Pottstown Borough
Date of valuation: December 1, 2008
Land area: 4.473 acres
194,844 s.f.

Sale No.	1	2	3
Date of Sale	Apr-08	Feb-08	Jan-07
Location	376 Apple Street Pottstown Borough, Montgomery Co, PA	SES Progress Street, Pottstown Borough, Montgomery Co, PA	ES Morview Boulevard Caernarvon Township, Berks County, PA
Consideration	\$40,000	\$360,000	\$152,000
Land Area (s.f.)	7,800	191,664	43,560
Unit Price (per s.f.)	\$5.13	\$1.88	\$3.49
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$5.13	\$1.88	\$3.49
Financing Terms	0%	0%	0%
Adjusted Price	\$5.13	\$1.88	\$3.49
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$5.13	\$1.88	\$3.49
Market Conditions (Time)	0%	0%	plus
Adjusted Price	\$5.13	\$1.88	\$3.66
Other Factors:			
Location	similar	inferior (+)	similar
Size	smaller (-)	similar	smaller (-)
Physical characteristics	superior (-)	superior (-)	superior (-)
Other	—	—	—
Net Adjustments	minus	plus	similar
Adjustment Factor	10.0%	65.0%	40.0%
Adjusted Unit Prices	\$0.51	\$1.22	\$1.46
Estimated Unit Value	\$1.10		
Land Area - square feet	194,844		
Total Market Value Estimate:	\$214,328		
Say	\$214,300		

SALES GRID - PARCEL 3

From: NWS Route 100
To: Pottstown Borough/West Pottsgrove Twp. Line
Pottstown Borough
Date of valuation: December 1, 2008
Land area: 10.765 acres

Sale No.	4	5	6
Date of Sale	Oct-07	Mar-07	Aug-06
Location	NES Greshville Road, Douglas Township, Berks County, PA	736 Furnace Road, Robeson Township, Berks County, PA	S of New Holland Rd, Brecknock Twp. Berks County, PA
Consideration	\$300,000	\$170,000	\$172,000
Land Area (acres)	19.27	6.63	11.43
Unit Price (per acre)	\$15,568	\$25,641	\$15,048
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$15,568	\$25,641	\$15,048
Financing Terms	0%	0%	0%
Adjusted Price	\$15,568	\$25,641	\$15,048
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$15,568	\$25,641	\$15,048
Market Conditions (Time)	0%	0%	0%
Adjusted Price	\$15,568	\$25,641	\$15,048
Other Factors:			
Location	superior (-)	superior (-)	inferior (+)
Size	larger (+)	smaller (-)	similar
Physical characteristics	superior (-)	superior (-)	superior (-)
Other	—	—	—
Net Adjustments	minus	plus	plus
Adjustment Factor	30.0%	15.0%	45.0%
Adjusted Unit Prices	\$4,670	\$3,846	\$6,772
Estimated Unit Value	\$4,200		
Land Area - acres	10.765		
Total Market Value Estimate:	\$45,213		
Say	\$45,200		

SALES GRID - PARCEL 4

From: Pottstown Boro/West Pottsgrove Twp. Line
To: Milepost 1-5/8
West Pottsgrove Township
Date of valuation: December 1, 2008
Land area: 1.332 acres

Sale No.	7	8	9
Date of Sale	Aug-08	Jun-08	Jun-08
Location	L: 8905 Quarry Road, Douglas Township, Berks County, PA	NS Keystone Blvd Pottstown Borough Montgomery Co, PA	L: 5081 Quarry Road, Douglas Township, Berks County, PA
Consideration	\$250,000	\$650,000	\$320,000
Land Area (acres)	3 38	11 60	3 14
Unit Price (per acre)	\$73,964	\$56,034	\$101,911
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Financing Terms	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Market Conditions (Time)	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Other Factors:			
Location	superior (-)	superior (-)	superior (-)
Size	larger (+)	larger (+)	larger (+)
Physical characteristics	superior (-)	superior (-)	superior (-)
Other	—	—	—
Net Adjustments	minus	plus	plus
Adjustment Factor	5.0%	15.0%	5.0%
Adjusted Unit Prices	\$3,698	\$8,405	\$5,096
Estimated Unit Value	\$5,000		
Land Area - acres	1.332		
Total Market Value Estimate:	\$6,660		
Say	\$6,700		

SALES GRID - PARCEL 6

From: Milepost 1-5/8
To: Milepost 3-1/8
West Pottsgrove and Douglas Townships
Date of valuation: December 1, 2008
Land area: 11.409 acres

Sale No.	4	5	6
Date of Sale	Oct-07	Mar-07	Aug-06
Location	NES Greshville Rd, Douglas Township, Berks County, PA	736 Furnace Road, Robeson Township, Berks County, PA	S of New Holland Rd, Brecknock Twp. Berks County, PA
Consideration	\$300,000	\$170,000	\$172,000
Land Area (acres)	19.27	6.63	11.43
Unit Price (per acre)	\$15,568	\$25,641	\$15,048
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$15,568	\$25,641	\$15,048
Financing Terms	0%	0%	0%
Adjusted Price	\$15,568	\$25,641	\$15,048
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$15,568	\$25,641	\$15,048
Market Conditions (Time)	0%	0%	0%
Adjusted Price	\$15,568	\$25,641	\$15,048
Other Factors:			
Location	superior (-)	superior (-)	similar
Size	larger (+)	smaller (-)	similar
Physical characteristics	superior (-)	superior (-)	superior (-)
Other	—	—	—
Net Adjustments	minus	plus	plus
Adjustment Factor	40.0%	15.0%	60.0%
Adjusted Unit Prices	\$6,227	\$3,846	\$9,029
Estimated Unit Value	\$5,000		
Land Area - acres	11.409		
Total Market Value Estimate:	\$57,045		
Say	\$57,000		

SALES GRID - PARCEL 6

From: Milepost 1-5/8
To: South side Pine Forge Road,
Douglas Township
Date of valuation: December 1, 2008
Land area: 3.221 acres

Sale No.	7	8	9
Date of Sale	Aug-08	Jun-08	Jun-08
Location	L: 8905 Quarry Road, Douglas Township, Berks County, PA	NS Keystone Blvd Pottstown Borough Montgomery Co, PA	L: 5081 Quarry Road, Douglas Township, Berks County, PA
Consideration	\$250,000	\$650,000	\$320,000
Land Area (acres)	3.38	11.60	3.14
Unit Price (per acre)	\$73,964	\$56,034	\$101,911
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Financing Terms	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Market Conditions (Time)	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Other Factors:			
Location	superior (-)	superior (-)	superior (-)
Size	similar	larger (+)	similar
Physical characteristics	superior (-)	superior (-)	superior (-)
Other	—	—	—
Net Adjustments	minus	plus	plus
Adjustment Factor	5.0%	25.0%	5.0%
Adjusted Unit Prices	\$3,698	\$14,009	\$5,096
Estimated Unit Value	\$5,000		
Land Area - acres	3.221		
Total Market Value Estimate:	\$16,105		
Say	\$16,100		

SALES GRID - PARCEL 7

From: NS Pine Forge Road
To: SWS Greshville Road,
Douglas Township
Date of valuation: December 1, 2008
Land area: 25.057 acres

Sale No.	4	6	10
Date of Sale	Oct-07	Aug-06	Aug-05
Location	NES Greshville Road, Douglas Township, Berks County, PA	S of New Holland Rd, Brecknock Twp, Berks County, PA	WS of Cedar Hill Rd Robeson Township, Berks County, PA
Consideration	\$300,000	\$172,000	\$305,000
Land Area (acres)	19.27	11.43	22.69
Unit Price (per acre)	\$15,568	\$15,048	\$13,442
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$15,568	\$15,048	\$13,442
Financing Terms	0%	0%	0%
Adjusted Price	\$15,568	\$15,048	\$13,442
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$15,568	\$15,048	\$13,442
Market Conditions (Time)	0%	0%	plus
Adjusted Price	\$15,568	\$15,048	\$14,786
Other Factors:			
Location	superior (-)	similar	superior (-)
Size	smaller (-)	smaller (-)	similar
Physical characteristics	superior (-)	superior (-)	superior (-)
Other	—	—	—
Net Adjustments	minus	plus	plus
Adjustment Factor	25.0%	35.0%	35.0%
Adjusted Unit Prices	\$3,892	\$5,267	\$5,175
Estimated Unit Value	\$4,800		
Land Area - acres	25.057		
Total Market Value Estimate:	\$120,274		
Say	\$120,300		

SALES GRID - PARCEL 8

From: NES Greshville Road,
 To: West side Farmington Avenue
 Douglas Township
 Date of valuation: December 1, 2008
 Land area: 9.294 acres

Sale No.	7	8	9
Date of Sale	Aug-08	Jun-08	Jun-08
Location	L: 8905 Quarry Road, Douglas Township, Berks County, PA	NS Keystone Blvd Pottstown Borough Montgomery Co, PA	L: 6081 Quarry Road, Douglas Township, Berks County, PA
Consideration	\$250,000	\$650,000	\$320,000
Land Area (acres)	3 38	11 60	3 14
Unit Price (per acre)	\$73,964	\$56,034	\$101,911
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Financing Terms	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Market Conditions (Time)	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Other Factors:			
Location	superior (-)	superior (-)	superior (-)
Size	smaller (-)	similar	smaller (-)
Physical characteristics	superior (-)	superior (-)	superior (-)
Other	—	—	—
Net Adjustments	minus	plus	plus
Adjustment Factor	5 0%	15.0%	5.0%
Adjusted Unit Prices	\$3,698	\$8,405	\$5,096
Estimated Unit Value	\$5,000		
Land Area - acres	9.294		
Total Market Value Estimate:	\$46,470		
Say	\$46,500		

SALES GRID - PARCEL 9

From: East side Farmington Avenue
To: Colebrookdale Twp/Boyertown Borough line
Douglas and Colebrookdale Townships
Date of valuation: December 1, 2008
Land area: 6.706 acres

Sale No.	4	5	6
Date of Sale	Oct-07	Mar-07	Aug-06
Location	NES Greshville Rd, Douglas Township, Berks County, PA	736 Furnace Road, Robeson Township, Berks County, PA	S of New Holland Rd, Brecknock Twp, Berks County, PA
Consideration	\$300,000	\$170,000	\$172,000
Land Area (acres)	19.27	6.63	11.43
Unit Price (per acre)	\$15,568	\$25,641	\$15,048
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$15,568	\$25,641	\$15,048
Financing Terms	0%	0%	0%
Adjusted Price	\$15,568	\$25,641	\$15,048
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$15,568	\$25,641	\$15,048
Market Conditions (Time)	0%	0%	0%
Adjusted Price	\$15,568	\$25,641	\$15,048
Other Factors:			
Location	superior (-)	superior (-)	superior (-)
Size	larger (+)	smaller (-)	larger (+)
Physical characteristics	superior (-)	superior (-)	superior (-)
Other	—	—	—
Net Adjustments	minus	plus	plus
Adjustment Factor	35.0%	30.0%	60.0%
Adjusted Unit Prices	\$5,449	\$7,692	\$9,029
Estimated Unit Value	\$5,500		
Land Area - acres	6.706		
Total Market Value Estimate:	\$36,883		
Say	\$36,900		

SALES GRID - PARCEL 10

From: Colebrookdale Twp/Boyertown Borough line
To: Southwest side of Second Street
Boyertown Borough
Date of valuation: December 1, 2008
Land area: 2.239 acres

Sale No.	7	8	9
Date of Sale	Aug-08	Jun-08	Jun-08
Location	L: 8905 Quarry Road, Douglas Township, Berks County, PA	NS Keystone Blvd Pottstown Borough Montgomery Co, PA	L: 5081 Quarry Road, Douglas Township, Berks County, PA
Consideration	\$250,000	\$650,000	\$320,000
Land Area (acres)	3.38	11.60	3 14
Unit Price (per acre)	\$73,964	\$56,034	\$101,911
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Financing Terms	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Market Conditions (Time)	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Other Factors:			
Location	inferior (+)	similar	inferior (+)
Size	larger (+)	larger (+)	larger (+)
Physical characteristics	superior (-)	superior (-)	superior (-)
Other	—	—	—
Net Adjustments	minus	plus	plus
Adjustment Factor	105.0%	115 0%	105.0%
Adjusted Unit Prices	\$77,663	\$64,440	\$107,006
Estimated Unit Value	\$75,000		
Land Area - acres	2.239		
Total Market Value Estimate:	\$167,925		
Say	\$167,900		

SALES GRID - PARCEL 11

From: Northeast side of Second Street
 To: Southwest side Fourth Street
 Boyertown Borough
 Date of valuation: December 1, 2008
 Land area: 1.814 acres
 79,018 s.f.

Sale No.	1	2	3
Date of Sale	Apr-08	Feb-08	Jan-07
Location	376 Apple Street Pottstown Borough, Montgomery Co, PA	SES Progress Street, Pottstown Borough, Montgomery Co, PA	ES Morvlew Blvd Caernarvon Township, Berks County, PA
Consideration	\$40,000	\$360,000	\$152,000
Land Area (s.f.)	7,800	191,664	43,560
Unit Price (per s.f.)	\$5.13	\$1.88	\$3 49
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$5.13	\$1 88	\$3 49
Financing Terms	0%	0%	0%
Adjusted Price	\$5.13	\$1.88	\$3 49
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$5.13	\$1.88	\$3 49
Market Conditions (Time)	0%	0%	plus
Adjusted Price	\$5 13	\$1.88	\$3.66
Other Factors:			
Location	similar	inferior (+)	similar
Size	smaller (-)	larger (+)	similar
Physical characteristics	superior (-)	superior (-)	inferior
Other	—	—	—
Net Adjustments	minus	plus	similar
Adjustment Factor	70.0%	140.0%	95.0%
Adjusted Unit Prices	\$3.59	\$2.63	\$3.48
Estimated Unit Value	\$3.00		
Land Area - square feet	79,018		
Total Market Value Estimate:	\$237,054		
Say	\$237,000		

SALES GRID - PARCEL 12

From: Northeast side of Fourth Street
To: Milepost 8-1/2
Boyertown Borough
Date of valuation: December 1, 2008
Land area: 1.758 acres

Sale No.	7	8	9
Date of Sale	Aug-08	Jun-08	Jun-08
Location	L: 8905 Quarry Road, Douglas Township, Berks County, PA	NS Keystone Blvd Pottstown Borough Montgomery Co, PA	L: 5081 Quarry Road, Douglas Township, Berks County, PA
Consideration	\$250,000	\$650,000	\$320,000
Land Area (acres)	3.38	11.60	3.14
Unit Price (per acre)	\$73,964	\$56,034	\$101,911
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Financing Terms	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Market Conditions (Time)	0%	0%	0%
Adjusted Price	\$73,964	\$56,034	\$101,911
Other Factors:			
Location	inferior (+)	superior (-)	inferior (+)
Size	larger (+)	larger (+)	larger (+)
Physical characteristics	superior (-)	superior (-)	superior (-)
Other	—	—	—
Net Adjustments	minus	plus	plus
Adjustment Factor	90.0%	95.0%	90.0%
Adjusted Unit Prices	\$66,568	\$53,233	\$91,720
Estimated Unit Value	\$65,000		
Land Area - acres	1.758		
Total Market Value Estimate:	\$114,270		
Say	\$114,300		

SALES GRID - PARCEL 13**From: Milepost 8-1/2****To: Boyertown Borough/Colebrookdale Twp. Line****Boyertown Borough****Date of valuation: December 1, 2008****Land area: .863 acre****37,592 s.f.**

Sale No.	1	2	3
Date of Sale	Apr-08	Feb-08	Jan-07
Location	376 Apple Street Pottstown Borough, Montgomery Co, PA	SES Progress Street, Pottstown Borough, Montgomery Co, PA	ES Morvlew Boulevard Caernarvon Township, Berks County, PA
Consideration	\$40,000	\$360,000	\$152,000
Land Area (s.f.)	7,800	191,664	43,560
Unit Price (per s.f.)	\$5.13	\$1 88	\$3 49
Adjustments:			
Property Rights Conveyed	0%	0%	0%
Adjusted Price	\$5.13	\$1.88	\$3 49
Financing Terms	0%	0%	0%
Adjusted Price	\$5.13	\$1.88	\$3 49
Conditions of Sale (Motivation)	0%	0%	0%
Adjusted Price	\$5 13	\$1.88	\$3 49
Market Conditions (Time)	0%	0%	plus
Adjusted Price	\$5.13	\$1 88	\$3.66
Other Factors:			
Location	superior (-)	superior (-)	superior (-)
Size	smaller (-)	larger (+)	similar
Physical characteristics	superior (-)	superior (-)	similar
Other	—	—	—
Net Adjustments	minus	plus	similar
Adjustment Factor	20.0%	80.0%	45.0%
Adjusted Unit Prices	\$1.03	\$1 50	\$1.65
Estimated Unit Value	\$1 30		
Land Area - square feet	37,592		
Total Market Value Estimate:	\$48,870		
Say	\$48,900		

TOTAL ACROSS THE FENCE VALUATION

The total estimated market value of the subject right of way in its entirety as estimated using the across-the-fence technique of the Sales Comparison Approach is \$1,241,400. The total valuation is summarized on the following table.

VALUATION SUMMARY - PARCELS NO. 1 -13

<u>Parcel No.</u>	<u>Parcel Size (acres)</u>	<u>Contributory Value</u>
1	0.997	\$130,300
2	4.473	\$214,300
3	10.765	\$45,200
4	1.332	\$6,700
5	11 409	\$57,000
6	3 221	\$16,100
7	25.057	\$120,300
8	9 294	\$46,500
9	6 706	\$36,900
10	2.239	\$167,900
11	1 814	\$237,000
12	1 758	\$114,300
13	0 863	\$48,900
Totals	79.928	\$1,241,400

ASSUMPTIONS AND LIMITING CONDITIONS

Where applicable, this appraisal report has been made subject to the following assumptions and limiting conditions:

- No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.
- The property was appraised free and clear of any or all liens or encumbrances unless otherwise stated.
- Responsible ownership and competent property management are assumed.
- It is assumed that if the property were marketed, it would be done in a manner consistent with good quality marketing procedures including adequate time exposure and typical market terms.
- The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
- All engineering is assumed to be correct. The plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
- It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
- It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined, and considered in the appraisal report.
- It is assumed that all required licenses, certificates of occupancy, consents or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

ASSUMPTIONS AND LIMITING CONDITIONS
(continued)

- It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report.
- It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.
- The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
- Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event only with proper written qualifications and only in its entirety.
- The appraiser herein by reason of this appraisal is not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.
- Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales or other media without the prior written consent and approval of the appraiser.
- Any value estimate(s) provided in the report apply to the entire property, and any proration or division of the total into fractional interests will invalidate the value estimate, unless such proration or division of interests has been set forth in the report.

ASSUMPTIONS AND LIMITING CONDITIONS
(continued)

- The property is assumed to be free of toxic wastes and/or hazardous and prohibited substances in any form, unless otherwise noted in this report. No investigation has been made by the appraiser as to the existence of these substances and no guarantee is implied as to their absence. The appraiser is not qualified to detect such substances and conditions. The value conclusions assume that the property is free and clear of any such adverse conditions unless specifically indicated in this report. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field if any question exists about toxic wastes or hazardous substances.
- The property is assumed to be free of any lead based paint unless otherwise noted in this report. No investigation has been made by the appraiser as to the existence of lead based paint and no guarantee is implied as to its absence. The appraiser is not qualified to detect such substances and conditions. The value conclusion(s) in this report assume that the property is free and clear of any such adverse conditions unless specifically indicated. No responsibility is assumed for the presence of lead based paint or for any expertise or engineering knowledge required to discover it. The client is urged to retain an expert in this field if any question or concern exists about the occurrence of lead based paint.
- The Americans with Disabilities Act (ADA) became effective January 26, 1992. I (we) have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more of the requirements of the act. If so, this fact could have a negative effect upon the value of the property. Since I (we) have no direct evidence relating to this issue, I (we) did not consider possible noncompliance with the requirements of ADA in estimating the value of the property.

CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the *Uniform Standards of Professional Appraisal Practice*.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

CERTIFICATION

(continued)

- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the person signing this certification.
- As of the date of this report, I have completed the requirements under the continuing education program of the Appraisal Institute.
- I am currently certified by the Pennsylvania State Board of Certified Real Estate Appraisers as a General Appraiser. Expiration date is June 30, 2009.

The total market value estimate as of the date of valuation, December 1, 2008, was \$1,241,400.



William S. Yetke

MAI, SRA

SCGREA #GA-000161-L

PA Certified Commercial Real Estate Appraiser

12/16/08
Date

EXHIBITS

DESCRIPTIONS OF COMPARABLE LAND SALES DATA**LAND SALE NO. 1**

Location: 376 Apple Street,
 Pottstown Borough,
 Montgomery County, Pennsylvania
 Tax Parcel No: 16-00-00444-008
 Date of Sale: April 9, 2008
 Grantor: Linda G. Larkin
 Grantee: Francis X. McLaughlin
 Deed Reference: Book 5689, page 1953
 Consideration: \$40,000
 Land Area: 7,800 square feet
 Unit Price: \$5.13 per square feet
 Zoning: TTN, Traditional Town Neighborhood
 Description:
 Shape: Rectangular
 Frontage: 60 feet on the southerly side of
 Apple Street
 Topography: Level
 Land cover: Cleared
 Other: Site for new construction

LAND SALE NO. 2

Location: Easterly side of Progress Street,
 northwest of Glasgow Street,
 Pottstown Borough, Montgomery
 County, Pennsylvania
 Tax Parcel No: 16-00-11412-308
 Date of Sale: February 28, 2008
 Grantor: David R. Schwab
 Grantee: 409 Progress St, LLC
 Deed Reference: Book 5685, page 658, 663
 Consideration: \$360,000
 Land Area: 4.40 acres; 191,664 square feet
 Unit Price: \$1.88 per square feet
 Zoning: FO, Flex Office
 Description:
 Shape: Irregular
 Frontage: 205.1 front feet on Progress Street
 Other: Adjacent to airport business campus

LAND SALE NO. 3

Location: Easterly side of Morview Boulevard,
 South of Main Street, Caernarvon
 Township, Berks County,
 Pennsylvania
 Tax Parcel No: 35-5310-16-64-5052
 Date of Sale: February 13, 2007
 Grantee: Martins Country Markets, LLC

Deed Reference:	Book 5073, page 2303
Consideration:	\$152,000
Land Area:	5.37 acres; 1.00 acre/43,560 square feet usable
Unit Price:	\$3.49 per square foot
Zoning:	C-2, Commercial
Description:	
Shape:	Irregular
Frontage:	Approximately 213 front feet on Morview Boulevard
Topography:	Sloping
Land cover:	Grass, trees, brush
Other:	Lower land along northerly side is crossed by a creek with attendant wetlands
	According to the selling broker, the sale was based on only about one acre being usable

LAND SALE NO. 4

Location:	Northeasterly side of Greshville Road, Douglas Township, Berks County, Pennsylvania
Tax Parcel No:	41-5386-13-24-4950
Date of Sale:	October 11, 2007
Grantor:	Randal S. Doaty, etux
Grantee:	Thomas R. & Roberta A. Graver
Deed Reference:	Book 5238, page 177
Consideration:	\$300,000
Land Area:	19.27 acres
Unit Price:	\$15,568 per acre
Zoning:	R-1, Rural Suburban Residential
Description:	
Shape:	Irregular
Frontage:	Along northeasterly side of Greshville Road
Topography:	Rolling land
Other:	A Met Ed Company power line easement runs along the northerly side of the property

LAND SALE NO. 5

Location:	736 Furnace Road, Robeson Township, Berks County, Pennsylvania
Tax Parcel No:	73-5322-00-51-3002
Date of Sale:	March 26, 2007
Grantor:	Jeffrey L. & Christina M. Sullivan
Grantee:	Hason C. & Christine B. Mariano
Deed Reference:	Book 5107, page 2021
Consideration:	\$170,000

Land Area:	6.63 acres
Unit Price:	\$25,641 per acre
Zoning:	R- Rural Residential
Description:	
Shape:	Irregular
Frontage:	On Furnace Road
Topography:	Level and rolling
Land cover:	Part pasture; part wooded
Other:	Stream runs along rear of property
Use:	Site for residential development

LAND SALE NO. 6

Location:	South of New Holland Road, North of Alleghenyville Road, Brecknock Township, Berks County, Pennsylvania
Tax Parcel No:	34-4393-01-16-5808
Date of Sale:	August 21, 2006
Grantor:	Edwin Myers, etal.
Grantee:	Mark A. Janelle M. Maggs
Deed Reference:	Book 4965, page 178
Consideration:	\$172,000
Land Area:	11.43 acres
Unit Price:	\$15,048 per acre
Zoning:	RR, Rural Residential
Description:	
Shape:	Irregular
Frontage:	No direct road frontage; accessed by unimproved road off of Alleghenyville Road
Topography:	Sloping
Other:	Wooded tract

LAND SALE NO. 7

Location:	L: 8905 Quarry Road Douglas Township, Berks County, Pennsylvania
Tax Parcel No:	41-5374-18-40-8905
Date of Sale:	August 22, 2008
Grantor:	Keystone Industrial Group
Grantee:	Trap rock Lot 3, LLC
Deed Reference:	Book 5406, page 2213
Consideration:	\$250,000
Land Area:	3.38 acres
Unit Price:	\$73,964 per acre
Zoning:	I-2, General Industrial
Use:	Site for new industrial/office construction

LAND SALE NO. 8

Location: North side of Keystone Boulevard,
Pottstown Borough, Montgomery
County, Pennsylvania
16-00-15360-014

Tax Parcel No: 16-00-15360-014

Date of Sale: June 23, 2008

Grantor: Sbn Unicover, LLC

Grantee: Smkoz, LLC

Deed Reference: Book 5698, page 2946

Consideration: \$650,000

Land Area: 11.60 acres

Unit Price: \$56,034 per acre

Zoning: FO, Flex Office

Description:

Shape: Irregular

Frontage: 406.85 front feet on the north side
of Keystone Boulevard Road

Topography: Level, sloping

Other: Public utilities; floodplain

LAND SALE NO. 9

Location: L: 5081 Quarry Road
Douglas Township,
Berks County, Pennsylvania
41-5374-18-42-5081

Tax Parcel No: 41-5374-18-42-5081

Date of Sale: June 6, 2008

Grantor: Steven E. Long

Grantee: Reading Materials, Inc.

Deed Reference: Book 5368, page 1483

Consideration: \$320,000

Land Area: 3.14 acres

Unit Price: \$101,911 per acre

Zoning: I-2, General Industrial

Use: Site for industrial/office
development

LAND SALE NO. 10

Location: westerly side of Cedar Hill Road,
north of Cocalico Road, Robeson
Township, Berks County,
Pennsylvania

Tax Parcel No: 73-5334-03-11-7375

Date of Sale: August 3, 2005

Grantor: Anne Marie Chen-See

Grantee: Rodney K. Trusty

Deed Reference: Book 4640, page 1438

Consideration: \$305,000

Land Area: 22.69 acres

Unit Price: \$13,442 per acre

Zoning: Part R-Rural Residential and part
LDR, Low Density Residential

Description:

Shape: Nearly rectangular

Frontage: 273 feet of frontage on Cedar Hill
Road

Topography: Level and rolling

Land cover: Wooded

Use: Subdivision approval for 11 lots
was obtained after the sale

STATEMENT OF PROFESSIONAL QUALIFICATIONS AND EXPERIENCE

WILLIAM S. YETKE, MAI, SRA
WILLIAM YETKE, REAL ESTATE
1315 Walnut Street - Suite 808
Philadelphia, PA 19107
Telephone: (215) 546-3241
FAX: (215) 546-3879
E-mail: yetke@aol.com

BUSINESS EXPERIENCE

Have been an independent fee appraiser and consultant in real estate since 1969 in the Philadelphia metropolitan area.

Principal practice has been in the Pennsylvania, New Jersey and Delaware area.
Assignments have been completed nationwide.

Services provided include: Appraisals made of market value, rental value, insurable value, going concern value, value in use, easements, partial interests, minerals and natural resources. Feasibility and Highest and Best Use studies. Investment Analysis. Expert testimony. Review appraisals.

Appraisals made for: Acquisition and Disposition, Estate Purposes, Insurance Purposes, Financing, Bankruptcy Proceedings, Eminent Domain, Conversion/Rehabilitation, Assessment Appeals and Zoning Cases.

Qualified and testified as an expert witness in court, before Boards of View and Masters, and at arbitration hearings.

EMPLOYMENT HISTORY

Self-employed from January 1982 to the present
Bernard C. Meltzer & Associates, Inc. (1970-1982)
Albert M. Greenfield & Co., Inc. (1969-1970)

LICENSES

State Certified General Appraiser - Pennsylvania
State Certified General Appraiser - New Jersey
Real Estate Broker - Pennsylvania

PROFESSIONAL AFFILIATIONS

Appraisal Institute - Member (MAI, SRA)
Pennsylvania Association of Realtors
Philadelphia Board of Realtors

EDUCATIONAL BACKGROUND

Bachelor of Business Administration (BBA), Wharton School,
University of Pennsylvania
Graduated Cum Laude
Major - Economics and Finance
Completed Real Estate Program
Appraisal Institute (formerly American Institute of Real
Estate Appraisers)
Course 1A - Principles of Appraising
Course 1B - Capitalization
Course 2 - Valuation of Urban Properties
Course 6 - Investment Analysis

CONTINUING EDUCATION

Have completed the requirements of the continuing education
programs of the Appraisal Institute, Pennsylvania State
Board of Certified Real Estate Appraisers, Pennsylvania
State Real Estate Commission, and New Jersey State Board of
Certified Real Estate Appraisers.

TEACHING ASSIGNMENTS

Adjunct Lecturer, Department of Legal and Real Estate
Studies, Temple University - Real Estate Valuation
Course.
Taught Real Estate Investment Seminar at Penn State
University, Oqontz Campus.
Guest lecturer on mineral valuation, Penn State University,
Main Campus, State College, PA.
Guest lecturer, Real Estate Appraisal: Wharton School of
the University of Pennsylvania.

PUBLICATIONS

Contributing author:

Chapter 6, "Valuation of Real Estate." Robert D. Feder,
Editor. Valuation Strategies in Divorce, Fourth Edition,
1997.
Chapters 12, 13, 14 & 14A, "Introduction to Real Estate;
High-Price Homes, Including Golf Course Communities;
Vacant Land; and Shopping Centers"
Robert D. Feder, Editor. Valuing Specific Assets In
Divorce, 2000.

TYPES OF REAL ESTATE APPRAISED

Air Rights	Mineral Resources
Apartments	Natural Springs
Archeological Properties	Nursing Homes
Automobile Showrooms & Garages	Office Buildings
Banks	Oil, Gas & Mineral Rights
Breweries	Parking Garages
Bus Terminals	Piers
Campgrounds	Post Offices
Cemeteries	Professional Buildings
Churches	Public Housing
Coast Guard Station	Developments
Commercial Buildings	Quarries
Community Centers	Railroad Rights-of-Way
Commuter Systems	Railroad Systems
Condominiums - Residential	Ranches
Condominiums - Offices	Recreational Facilities
Conservation Land/Easements	Residential Sites
Convenience Stores	Residential Subdivisions
Correctional Centers	Restaurants
Country Clubs	Retail Stores
Day Care Centers	Riparian Rights
Department Stores	Rooming Houses
Dinner Theaters	Sanitary Land Fills
Dwellings	Single Family Residences
Easements	Service Stations
Estates	Shopping Centers/Malls
Farms	Special Purpose
Fisheries	Properties
Flex Buildings	Subsurface Rights
Forests and Timber Resources	Summer Camps
Golf Courses	Supermarkets
Highway Rights-of-Way	Synagogues
Historical Properties	Theaters
Institutional Buildings	Timberland
Indian Reservations	Transit Systems
Industrial Buildings	Treatment Centers
Islands	Truck Terminals
Land	Tunnel Easement
Land Leases	Union Halls
Marinas	Warehouses
Manufacturing Facilities	Water Rights
Medical Office Buildings	Wetlands

PARTIAL LIST OF CLIENTS SERVED

Abraxas Foundation
Amerada Hess Corporation
American Philosophical Society
Amresco Corporation
Blank, Rome, Comisky & McCauley
Burlington County Bridge Commission
Cadbury Schweppes Co.
Citizens Financial Group
Conservation Fund
Consolidated Rail Corporation
Financial Research, Inc.
First Cornerstone Bank
First National Bank of Palmerton
First Star Savings Bank
General Accident Insurance Company
Henderson, Wetherill, O'Hey & Horsey
Laborer's International Union, Local #332
Lundy, Flitter & Beldecos
Marriott Corporation
Mellon Bank
Monsanto Company
Mount Washington Summit Road Company
National Fuel Gas Corporation
Neptune Corporation
Norfolk Southern Corporation
PNC Bank
Republic First Bank
River Network
Royal Bank America
Schnader, Harrison, Segal & Lewis
Seneca Resources Company
Shawnee Clinger Oil Company
Shell Oil Company
Shooster Properties
Silberman, Markovitz & Raslavich
Sprague & Sprague
St. Edmonds Federal Savings bank
Strauss and Associates/Planners
Summit Bank
Teamsters Local #115
Temple University
The Nature Conservancy
The Trust for Public Land
Texaco Oil Company
Wachovia Bank
Western Pennsylvania Conservancy
Westinghouse Electric Company
White and Williams
Zarwin, Baum, DeVito, Kaplan & O'Donnell

PARTIAL LIST OF CLIENTS SERVED, continued**Government Agencies/Authorities:****Federal:**

Federal Deposit Insurance Corporation
General Services Administration
Internal Revenue Service
U.S. Army Corps of Engineers
U.S. Department of the Interior
U.S. Fish and Wildlife Service
U.S. Forest Service
U.S. Justice Department
U.S. Postal Service

State:

Commonwealth of Pennsylvania
General Services Administration
Pennsylvania Department of Transportation
Pennsylvania Housing Finance Agency

Local/Regional Municipalities/Authorities:

Baltimore Mass Transit Authority
Bensalem Township, Bucks County, PA
Bucks County Housing Authority
Burlington County Bridge Commission
City of Philadelphia - Redevelopment Authority
City of Philadelphia - Law Department
Court of Common Pleas, Philadelphia
Greater Berks Development Fund
Lower Merion Township, Montgomery County, PA
Montgomery County Planning Commission
Philadelphia Gas Works
Southeastern Pennsylvania Transportation Authority (SEPTA)
Westtown Township, Chester County, PA

EXHIBIT 4

July 18, 2008

Mr Robert Parker

East Penn Railroad, LLC

505 South Broad Street

Kennett Square, PA 19348

RE Colebrookdale Line Abandonment

Mr Parker

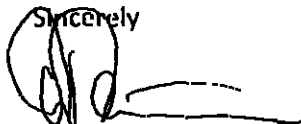
Per your invitation to bid, we offer the following for purchase and removal of your abandoned trackage between Pottstown and Boyertown, PA

Net Payable to ESPN

\$1,082,000.00

Thank you for the opportunity to bid on this project. Please feel free to call me if you have any questions.

Sincerely



Terry Peterson

President

SALVAGE AGREEMENT

THIS SALVAGE AGREEMENT ("Agreement") entered into this 31 day of July, 2008, between EAST PENN RAILROAD, L.L.C. ("ESPN"), and The Tie Yard of Omaha ("TYO").

WITNESSETH:

WHEREAS, ESPN will abandon a certain rail line in the State of Pennsylvania and desires to have the rail, ties, spikes, plates, joint bars, turnouts, OTM and related structures (excluding the bridges, culverts and ballast)(the "Assets") removed from the right-of-way and siding so abandoned; and

WHEREAS, ESPN desires to sell said rail and other Assets so removed; and

WHEREAS, TYO is in the business of salvaging rail lines and purchasing rail and other materials removed from right-of-way and sidings; and

WHEREAS, TYO desires to provide those services for ESPN.

WHEREAS, ESPN owns a rail line between milepost 0.0 near Pottstown, Pennsylvania and milepost 8.6 near Boyertown, Pennsylvania and can provide TYO access to said rail line without any third party claim of ownership or interest.

NOW THEREFORE, in consideration of the premises and the covenants contained in this Agreement, the Parties agree as follows:

Section 1. Scope of Work.

1.1. **Salvage.** Pursuant to the specifications contained in the attached Exhibit A, which is made a part of the Agreement by this reference, TYO shall remove and salvage the Assets from the following line segment: between milepost 0.0 in Pottstown, Pennsylvania and milepost 8.6 in Boyertown, Pennsylvania, a distance of approximately 8.6 miles (the "Line"). Any sidings appurtenant to the Line are included within the description of the Line.

1.2. **Permits, Fees, and Notices.** TYO shall secure and pay for any permits and licenses necessary for the proper execution and completion of its work under this Agreement. TYO shall also give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority relating to this work.

1.3. **Utilities.** TYO is responsible for establishing and maintaining contacts with all utility companies before commencing any of the work provided for in this Agreement to ensure that the work does not interfere with or disrupt the provision of any utility services. No work in the vicinity of or that may affect a utility shall be started without the approval of the President of East Penn Railroad, LLC. If it is determined that the work may interfere with the operation of a utility, TYO shall provide whatever advance notice of such interruption as may be required by law, regulation or ordinance or by the utility company. TYO shall promptly report any damage to utility lines caused by and to the utility or agency

affected. TYO shall comply with the instructions of the utility company or agency and shall pay all expenses of repair in connection with such damages.

1.4. Access Roads. TYO shall, at its own expense, make all arrangements with local authorities, operating departments, parks officials, railway officials, highway officials, utility and service companies, and other such companies for access, detours, crossings, traffic control, and similar requirements relating to the performance of the work and it shall comply with their requirements and regulations. TYO is responsible for upkeep of access roads constructed by TYO and snow removal from such access roads at its expense.

1.5. Performance of Work. TYO shall furnish the necessary materials, superintendence, labor, tools, equipment, and transportation and shall expeditiously perform and complete the work covered by this Agreement in a good and workmanlike manner and in accordance with the attached Exhibit A and standard customs and procedures in the railroad industry. TYO is responsible for all means, methods, techniques, sequences, and procedures and for coordinating all portions of the work described in Exhibit A.

1.6. Right to Control Employees. TYO shall have the exclusive right and duty to control the work of its employees. All persons employed by TYO or any of its subcontractors in the performance of this Agreement shall be the sole employees of TYO or its subcontractors.

Section 2. Payments.

2.1. Amount. TYO shall pay ESPN a total of one million eighty-two dollars (\$1,082,000.00) for the Assets.

2.2. Payment. TYO will pay ESPN the amount set forth in Section 2.1 in accordance to the payment schedule outlined in the cover letter beginning from the date ESPN provides TYO with a notice to proceed ("Notice"), i.e, three equal installments with the first due upon TYO's receipt of notice to proceed, the second due forty-five (45) days later and the third forty-five (45) days after the second. The Notice will be given following abandonment approval by the Surface Transportation Board.

2.3. Offer of Financial Assistance. If the Surface Transportation Board requires the sale of the Line under the Offer of Financial Assistance provisions of 49 U.S.C. 10904, this Agreement will become void, if the offering party closes on the purchase.

Section 3. Taxes.

TYO shall pay any and all taxes arising from its work under this Agreement (including but not limited to any sales or use taxes but excluding any property taxes that may be owed by ESPN), levies, duties or charges of whatsoever nature or kind payable by TYO arising out of or in connection with this Agreement. TYO shall comply with the laws of the State of Pennsylvania concerning sales tax or any other applicable taxes.

Section 4. Time for Performing Work.

4.1. Commencement of Salvage Work. The salvage work on the Line shall commence within thirty (30) days of the date ESPN provides TYO with a notice to proceed unless TYO is prevented from commencing said work because of an act of Force Majeure as defined in this Agreement. TYO will remove and repair all road crossings within one hundred eighty (180) days of the time the Assets are removed from any such crossing. If TYO is delayed in the performance of its work by an event of Force Majeure as defined in Section 5 below, it shall notify ESPN of that event of Force Majeure as therein provided and TYO's performance obligations under this Agreement will be extended one day for each day the Force Majeure event persists.

4.2. Progress of Work. TYO shall conduct all work with sufficient forces and equipment that shall, in the judgment of ESPN, allow TYO to complete the work, within eighteen (18) months following the receipt of the Notice.

4.3. Time of the Essence. If TYO refuses or fails to prosecute the work with such diligence as will ensure its completion of the salvage operation provided for in this Agreement or if TYO abandons the work, TYO shall be liable for any and all direct losses, costs or damages of any type that ESPN may sustain or incur because of such refusal or abandonment, in addition to any other remedies it may have. Failure by TYO to timely complete the work specified in this Agreement shall not relieve TYO of its obligation to make the payment set forth in Section 2.1 above by the date set forth in Section 2.2 above.

4.4. Performance Bond. TYO will provide ESPN with a performance bond guaranteeing TYO's performance of its obligations pursuant to this Agreement. TYO's performance of its obligations is subject to the conditions set forth in Section 4.1 above.

4.5. Use of ESPN Property. At no cost to TYO, TYO may use ESPN's property adjacent to the ESPN's right-of-way at a location agreed to in writing by the parties to stage equipment and stockpile materials during the salvage of the Line. TYO shall vacate the premises, within one year immediately following the time of completion of the work provided for in this Agreement and shall restore the property to the condition in which it found it at no cost to ESPN. TYO shall bear the risk of loss concerning all materials, supplies, and equipment so staged or stockpiled.

Section 5. Force Majeure.

In the event TYO is unable, due to acts of God, including but not limited to flood, earthquake, hurricane, tornado or other severe weather or climatic conditions; acts of a public enemy, war, blockade, insurrection, vandalism or sabotage; governmental law, order or regulation to fulfill its obligations under this Agreement, then the time allowed for performance shall be extended automatically by a period of time equal to the period of delay or inability to perform so long as TYO promptly notifies ESPN in writing of occurrence, details the steps it is taking to eliminate the failure to perform, and states the expected time for such correction and pursues those steps with all due diligence.

Section 6. Compliance with Laws.

TYO shall give all notices required by and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the work described in this Agreement. TYO hereby indemnifies, holds harmless, and will defend ESPN and its affiliates, members, managers, managers, employees, agents, and invitees from and against any loss, cost, damage or expense (including reasonable attorneys' fees) arising from, occasioned by or in any manner connected with violations by or due to the work performed by TYO of any such laws, ordinances, rules, regulations or orders.

Section 7. Release, Indemnification, and Assumption of Responsibility.

7.1. Release of ESPN. TYO hereby releases ESPN and its affiliates, members, managers, employees, agents and affiliates from any claims arising from the performance of this Agreement that TYO or any of its employees, subcontractors, agents or invitees could otherwise assert against ESPN and its affiliates, members, managers, employees, agents, affiliates, and invitees regardless of the negligence of ESPN and its affiliates, members, managers, employees, agents, and invitees, except to the extent that such claims are proximately caused by the intentional misconduct or gross negligence of ESPN.

7.2. Duty to Indemnify, Defend, and Hold Harmless. TYO shall indemnify, defend, and hold harmless ESPN and its affiliates, members, managers, employees, agents or invitees for all judgments, awards, claims, demands, cost, expenses (including expert fees and reasonable attorneys' fees), for injury or death to all persons, including ESPN's and TYO 's officers, affiliates, directors, members, managers, agents, employees, and invitees and for loss and damage to property belonging to any person, arising in any manner from or in connection with or arising from TYO 's or any of TYO 's subcontractors, agents, employees or invitees acts or omissions or any failure to perform any obligation under this Agreement, except to the extent that such claims, demands or judgments are proximately caused by the intentional misconduct or gross negligence of ESPN.

7.3. Assumption of Responsibility. Upon receipt of a notice to proceed, TYO assumes all responsibility for loss of or damage to the Assets and to materials and property of TYO until ESPN accepts the work. ESPN represents and warrants that the condition of the abandoned line to be salvaged will remain in the same condition at the time ESPN issues the notice to proceed as it was at the time of TYO's inspection in June of 2008. TYO shall indemnify, defend, and hold harmless ESPN and its affiliates, members, managers, employees, agents, and invitees from and against any liability for loss of or damage to the materials and property of any subcontractor used in the performance of the work, including tools, machinery, equipment, appliances, supplies, scaffolding, and forms.

7.4. Survival of Assumptions. It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

Section 8. Insurance.

Before commencing any work pursuant to this Agreement, TYO must obtain and maintain in force and effect insurance, at TYO's expense, covering all of the work and services TYO performs under this Agreement by TYO and each of its subcontractors.

8.1. Workers' Compensation. Such coverage must be as is required by the laws of the State of Pennsylvania but if optional under state law, the insurance must cover all employees anyway. **THE INSURANCE POLICY MUST CONTAIN A SPECIFIC WAIVER OF THE INSURANCE COMPANY'S SUBROGATION RIGHTS AGAINST ESPN.**

8.2. Commercial General Liability. This coverage shall include but not be limited to Bodily Injury, Personal Injury, Property Damage, and Contractual Liability, with coverage of at least five million dollars (\$5,000,000) per occurrence and ten million dollars (\$10,000,000) in the aggregate. Where explosion, collapse or underground hazards are involved, the X, C, and U exclusions must be removed from the policy.

8.3. Automobile Liability Insurance. This coverage shall include bodily injury and property damage, with coverage of at least one million dollars (\$1,000,000) combined single limit or the equivalent.

8.4. Placement of Insurance. All insurance shall be placed with insurance companies licensed to do business in the State of Pennsylvania and with a current Best's Insurance Guide Rating of A and Class X or better.

8.5. Work within Fifty Feet of Railroad Track. If any work is to be performed within fifty (50) feet of a railroad track, then the insurance must provide for coverage of incidents occurring within fifty (50') feet of a railroad track and any provision to the contrary in the insurance policy must be specifically deleted.

8.6. Railroad as Named Insured Party. TYO shall maintain the insurance required in this Agreement from the time this Agreement is executed until three years after the completion of the work. In all cases, the certificate of insurance must specifically state that the ESPN will be shown as an additional insured on TYO's policies during the time it is performing the work provided for in this Agreement and for a period of three (3) years after the completion of the work. Any coverage afforded ESPN as an additional, named insured shall apply as primary and not excess to any insurance issued in the name of ESPN. ESPN shall not be added as an additional insured to TYO's Workers' Compensation coverages.

8.7. Certificates of Insurance. Before commencing any work under this Agreement, TYO shall furnish to ESPN Certificates of Insurance evidencing the issuance to TYO of the policies of insurance providing the types of insurance and limits of liability prescribed above. TYO shall also certify that ESPN shall be given not less than thirty (30) days' written notice prior to any material change, substitution or cancellation prior to the normal expiration of any of said policies of insurance. Cancellation or expiration of any of said policies of insurance shall not preclude ESPN from recovery

thereunder for any liability arising under this Agreement, nor shall the amount of such insurance limit the recovery of ESPN.

Section 9. Railroad's Right to Perform Work, Stop Work or Terminate Agreement.

9.1. Suspension of Work by TYO. TYO shall not suspend the salvage of the Line without the written permission of ESPN's President. If salvage work is so suspended, TYO may only recommence said work with the written permission of the President.

9.2. Remedy for Improper Work. If ESPN's President reasonably determines that TYO is not performing the salvage work in accordance with this Agreement or is not reasonably progressing with the work as fast as necessary to ensure its completion as required by this Agreement or is otherwise violating any of the provisions of this Agreement, he shall notify TYO in writing to remedy such improper work or to otherwise comply with the provisions of this Agreement. If on the expiration of fourteen (14) days (or immediately in the event of lack of insurance, a safety violation, environmental problem or other violation of the law) after the serving of such written notice upon TYO or within such additional time as shall be specified in the notice, TYO shall continue to neglect the work or fail to remedy any specified deficiencies, ESPN may terminate this Agreement by written notice to TYO and may take possession of the work and of all materials, tool, and appliances thereon, and employ such means as may be necessary to finish the work. TYO is liable for any damage to ESPN resulting from TYO's refusal or failure to complete the work within the specified time, whether ESPN terminates TYO's right to proceed with the work. The rights and remedies of ESPN in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

9.3. Bankruptcy. If TYO is the subject of any case under federal bankruptcy laws or makes a general assignment for the benefit of creditors or if a receiver is appointed for TYO, ESPN may, without prejudice to any other right or remedy it may have, by giving TYO or the receiver or the trustee in bankruptcy written notice, terminate the Agreement.

9.4. Survival of Obligations. TYO's obligation under the Agreement as to quality, correction, and warranty of the work performed by it up to the time of termination shall continue in force for a period of one (1) year after completion of the work.

10. Materialman's and Mechanic's Liens.

TYO shall promptly pay or cause to be paid all subcontractors and persons furnishing labor, services, articles or other materials for the work whether pursuant to an agreement with TYO or any subcontractor and shall deliver the work free from any claims or liens. At the time the salvage work is completed, TYO shall provide ESPN's President a notarized waiver of lien incorporated by this reference, as evidence that the work is free and clear from all liens for labor and materials, and that no claim then exists for which any lien could be filed or enforced.

11. Governing Law.

This Agreement shall be construed and enforced under the laws of the State of Pennsylvania and any action brought by either Party against the other shall be brought in a court in Pennsylvania with competent jurisdiction.

12. Disputes.

12.1. Differences Concerning the Agreement. Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled pursuant to this Section. During the pendency of the dispute resolution, TYO shall proceed with the work in accordance with reasonable instructions from ESPN's President unless continuation of the work is the matter that is in dispute, in which case TYO shall cease work as may be directed by ESPN's President.

12.2. Method of Resolution. The parties will attempt in good faith to resolve through negotiations any dispute, claim or controversy arising out of or relating to this Agreement. Either party may initiate negotiations by providing written notice to the other party setting forth the subject of the dispute, a detailed statement of its position regarding the dispute, or the relief requested. The recipient of the notice shall respond within seven (7) calendar days of receipt of the notice with a detailed statement of its position on and recommended solution to the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each party with full settlement authority will meet at a mutually agreeable time and place within thirty (30) days of a notice that the initial step did not resolve the dispute in order to exchange relevant information and attempt to resolve the dispute. If the dispute is not resolved pursuant to these negotiations, the matter will be submitted to a panel of arbitrators for arbitration. ESPN shall select one member of the panel, TYO will select the second member of the panel, and those two shall select the third member of the panel. The third member selected must be someone with expertise in the area of dispute. Any dispute, claim or controversy arising out of or related to this Agreement or the breach, termination, enforcement, interpretation or validity of it, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined through arbitration in accordance with the laws of the State of Pennsylvania in an arbitration proceeding to be held at a mutually agreeable site in the greater eastern Pennsylvania geographic area. Judgment may be entered in any court having jurisdiction. Each Party shall bear its own costs for its arbitrator and share equally the costs of the third arbitrator.

13. Inspections.

13.1. Inspection of Work by ESPN. ESPN and its authorized representatives shall have the right at any time to inspect all aspects of the work to be performed by TYO pursuant to this Agreement prior to acceptance. Any such inspection shall be for the sole benefit of ESPN and shall not relieve TYO of the responsibility of ensuring that the work strictly complies with the contractual requirements of this Agreement. No inspection by ESPN or its authorized representatives shall be construed as an acceptance. Inspections shall not relieve TYO of responsibility for damage to, or loss of, the material prior to acceptance nor shall it affect the continuing rights of ESPN after acceptance of the completed work.

13.2. Correction of Work. TYO shall promptly correct all work rejected by ESPN as failing to conform to the Agreement whether detected before or after completion unless ESPN consents to accept such work. TYO shall bear all costs for correcting rejected work. If TYO fails promptly to correct rejected work, ESPN may by contract or otherwise, correct such work and charge TYO for any costs arising the correction.

13.3. Acceptance of Work. Acceptance by ESPN of the work performed by TYO pursuant to this Agreement shall be made as promptly as practicable after TYO notifies ESPN it has completed the work.

14.0 Protection of Persons or Property.

14.1. Use Care and Vigilance. TYO shall use care and diligence to avoid injury to persons or property whenever it performs work under this Agreement. Whenever local conditions, laws or ordinances require, TYO shall furnish and maintain such passageways, guard fences, lights, and other facilities and means for protection as may be required without expense to ESPN.

14.2. Precautions for the Safety of Personnel. TYO shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work it performs pursuant to this Agreement. TYO shall also take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to all employees involved in its provision of any work, all the work provided, all materials and equipment to be incorporated in any work and other property at the premises or adjacent to the premises.

14.3 Personal Protective Equipment. The employees of TYO shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands and feet. Only waist length shirts with sleeves and trousers that cover the entire leg may be worn. The employees shall wear sturdy and protective footwear. All employees must wear protective head gear that meets the American National Standard Z89.1 in its latest version; eye protection that meets the American National Standard for occupational eye and face protection, Z87.1-1, in its latest version (additional eye protection must be provided to meet specific job situations); hearing protection that affords enough attenuation to give protection from noise levels on the job site(s); and audible back-up warning devices for all heavy equipment used by TYO on the job site(s).

14.4. Other Safety Requirements. In addition to the overall safety measures to be observed by TYO, it will also keep the job site(s) free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. TYO shall have proper first aid supplies available on the job site(s) so that proper and prompt first aid may be provided to any employee or other person who is injured on the job site(s). TYO must immediately notify ESPN of any United States Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site(s). TYO shall be responsible to ensure that its employees, while on the job site(s) or any other property of ESPN, shall not use, be under the influence of or have in their possession any alcoholic beverages or illegally obtained drug, narcotic or other substance.

14.5. Access to Premises. TYO is authorized to enter ESPN's property during daylight hours to perform services to be rendered under this Agreement. In the event of emergencies or any other requirement for TYO's services other than during regular business hours, arrangements to enter ESPN's property must be made through ESPN. TYO shall comply with federal, state, and local safety rules and regulations while on ESPN property and while performing services under this Agreement.

15. Protection of the Environment.

TYO shall ensure that all its activities in the work it does pursuant to this Agreement are conducted in such a way as to have the least possible adverse effect on the environment. TYO shall comply with all federal, state, and local laws, regulations, rules, ordinances or governmental directives regarding hazardous materials and protection of the environment, including but not limited to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (as amended), the Resource and Conservation and Recovery Act, the Federal Water Pollution Control Act, the Clean Water Act, and the Clean Air Act. TYO shall only use licensed facilities when disposing of materials related to the performance of TYO's duties and obligations pursuant to this Agreement. With the exception of the ties, ESPN states that to the best of its knowledge the Assets do not contain nor are they contaminated by any hazardous materials.

16. Clean-up of the Work Sites.

TYO shall maintain the work site(s) and ESPN's property in a neat and tidy condition and free from the accumulation of waste products and debris, other than that caused by ESPN or unrelated third party. TYO shall not permit any products used in conducting the work or fluids, to be discharged or spilled on the site(s) or on any adjacent lands, streams, rivers, ponds, sewers or any similar place. TYO shall remove from ESPN's property all temporary structures, rubbish, and waste materials resulting from the contract operations and shall remove from ESPN property all equipment, tools, materials, and supplies not needed whenever directed by ESPN, all at no cost to ESPN.

17. Nondiscrimination.

TYO shall comply with Title VI and Title VII of the Civil Rights Act of 1964, as amended and all regulations promulgated thereunder; the Americans with Disabilities Act of 1990 and other applicable state and federal laws relating to discrimination in employment.

18. Severability.

If any provision of this Agreement or any remedy provided for is found to be invalid under any applicable law, such provision shall be inapplicable and deemed omitted. The remaining provisions shall remain in effect by giving effect to all other provisions or portions of provisions.

19. Successors and Assigns.

TYO shall not assign this Agreement or any portion of it without the prior written agreement of ESPN. A condition of any such agreement shall be that the assignee will agree to be bound by the terms and conditions of this Agreement. This Agreement shall be binding on the heirs, legal representatives,

successors, and assigns of TYO and shall inure to the benefit of the successors and assigns of ESPN which approval shall not be unreasonably withheld.

20. Miscellaneous Provisions.

20.1 Service of Notice. All notices provided for in this Agreement shall be in writing and shall be served by depositing the notice in first class mail, postage prepaid or by sending the notice by prepaid overnight courier service or via facsimile followed by mailing said notice via first class mail, postage prepaid, to the following addresses:

If to The Tie Yard of Omaha:
8202 "F" Street
Omaha, NE 68127
Facsimile Number: (402) 339-4965
Attn: Terry Peterson

If to ESPN:
505 South Broad Street
Kennett Square, Pennsylvania 19348
Facsimile Number: (610) 925-0135
Attn: Bob Parker

or to such other person or address of which one Party might subsequently notify the other of in writing from time to time.

20.2. Rights and Remedies. *The duties and obligations imposed by this Agreement and the rights and remedies available under it shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available at law.*

20.3. Relationship. The Parties are not employer and employee and nothing in this Agreement shall be construed as creating such a relationship between TYO and ESPN. Subject to the provisions of this Agreement, TYO may adopt such arrangements as it may desire regarding the details of the work it is to perform pursuant to this Agreement as well as the personnel to be hired to do the work. Whatever arrangements TYO adopts must, however, be consistent with the achievement of the result contracted for within the time agreed upon in this Agreement. In no event shall ESPN be required to make deductions from compensation or report earnings of employees of TYO under the Social Security Act or any other federal or state law purporting to levy a tax on the payrolls or the compensation of employees. TYO agrees to indemnify and save ESPN harmless from any and all liability, cost or expense under any such law.

20.4 Subcontractors. TYO may, with the written permission of ESPN, subcontract out portions of the work to be performed under this Agreement so long as it preserves and protects the rights of ESPN contained in this Agreement. Such contracts or written agreements with subcontractors shall require them to perform their part of the work in accordance with and subject to the terms and conditions of this Agreement. TYO shall be fully responsible to ESPN for the acts and omissions of subcontractors and of persons employed by them in the same manner in which TYO is responsible under this Agreement for acts and omissions of persons directly employed by it. Thus, TYO agrees that it shall incorporate the terms and conditions of this Agreement into all subcontract agreements into which it enters with subcontractors. No such contract shall release or relieve TYO from any obligation under this Agreement and TYO shall be as fully responsible to ESPN for the acts and omissions of any and all subcontractors and of any persons either directly or indirectly employed by them as if such acts and omissions were the acts and omissions of TYO or of persons directly employed by TYO. TYO shall provide ESPN with

copies of all subcontractor agreements entered into between TYO and its subcontractors. Each subcontractor agreement may be assigned by TYO to ESPN, provided that (i) assignment is effective only after termination of this Agreement by ESPN for cause and only for those subcontract agreements that ESPN accepts by notifying the subcontractor and TYO in writing and (ii) the assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to this Agreement (iii) approval of subcontractor agreements will not be unreasonably withheld.

21. Entire Agreement; Waiver.

This instrument constitutes the entire agreement between the parties and supersedes all other agreements and understandings, both written and oral, between the parties respecting the subject matter of this Agreement. Nothing in this Agreement shall be construed to constitute a waiver by either party of any rights, duties or causes of action that may arise out of this Agreement.

22. Third Party Beneficiaries.

This Agreement is not intended to and shall not be deemed to be for the benefit of any person or entity not a party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

THE TIE YARD OF OMAHA

By: _____

Its: _____


PRESIDENT

EAST PENN RAILROAD, L.L.C.

By: _____

Its: _____



PRESIDENT

APPENDIX A

Contractor will take up, remove, and dispose of the track and track materials on the line segments listed in Section 1.1 of the Agreement to which this Exhibit A is attached. ESPN assumes no responsibility or liability for the correctness, adequacy or variation from the quantities shown in the Agreement and actual quantities as determined by measurement. All materials are sold "as-is, where-is" and no warranty, either expressed or implied, is given by ESPN regarding the quality, condition, use or re-use of the materials.


Contractor shall adhere to the following specifications while undertaking the salvage operations:


1. Contractor shall take ample precautions in protecting all existing structures, improvements, and utilities that may be encountered, and shall be liable for any damages resulting from its operations.
2. All existing right-of-way fences shall remain in place and all waterways shall be kept clear.
3. Contractor shall not enter private property adjacent to ESPN's right-of-way without obtaining permission of the owner.
4. Contractor shall have the sole responsibility for providing, installing, moving, replacing, maintaining, cleaning and removing upon completion of work, all barricades, warning signs, barriers, cones, lights, signals, and other such type devices as shown in the Manual on Uniform Traffic Control Devices or required by the appropriate Municipality.
5. Contractor shall take all necessary precautions in handling ties that have been treated with creosote. There will be no burning or burial of ties or debris on ESPN property.
6. Contractor shall conduct all salvage operations to avoid affecting natural drainage.
7. All public road crossings shall be reconstructed comparable to adjacent road construction as per the requirements of the governmental agency responsible for the roadway. All public road crossings shall be removed in accordance with the requirements of the governmental agency that maintains the road.
8. No wooden boxes, stone or concrete culverts or arches or cast iron or concrete pipe or bridges now in place, are to be removed.
9. Contractor shall remove all signs such as whistle posts, road crossing signs or station signs.


Initial


Initial

10. Contractor shall remove and dispose of the salvaged materials in conformity with all state and federal environmental and regulatory statutes, regulations and rules. The Contractor shall adhere to any and all conditions of the Surface Transportation Board ruling on the Abandonment. The Railroad's right-of-way shall be left in a condition satisfactory to ESPN.


Initial


Initial